

Department of Veterans Affairs

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Department of Veterans Affairs benefits which would under State law escheat to the State, less legal expenses of any administration necessary to determine that an escheat is in order.

(b) *General Post Fund*; 38 U.S.C. 5220(a). Upon the death of a veteran intestate while a member or patient in any facility while being furnished care or treatment therein by the Department of Veterans Affairs, who is not survived by a spouse, next of kin, or heirs entitled under the laws of the veteran's domicile, the veteran's fiduciary, if any, or the veteran's personal representative shall account for and turn over to the Department of Veterans Affairs all personal property, including money and chooses in action owned by the veteran at the time of his or her death. (See also §14.514(c) of this chapter.)

(c) *Refusal of fiduciary or personal representative to cooperate*. If the fiduciary or personal representative, if any, refuses to voluntarily comply with the provisions of paragraph (a) or (b) of this section, the Veterans Service Center Manager will submit a complete report to the Regional Counsel.

[36 FR 19025, Sept. 25, 1971, as amended at 40 FR 54250, Nov. 21, 1975]

§ 13.111 Claims of creditors.

Under 38 U.S.C. 5301(a), payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt, either before or after receipt by the beneficiary, from the claims of creditors and State and local taxation. The fiduciary should invoke this defense where applicable. If the fiduciary does not do so, the Veterans Service Center Manager should refer the matter to the Regional Counsel for appropriate action.

[40 FR 54251, Nov. 21, 1975]

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AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 2671-2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901-5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

SOURCE: 19 FR 5552, Aug. 31, 1954, unless otherwise noted.

§ 14.500 Functions and responsibilities of General Counsel.

The General Counsel is responsible to the Secretary for the following:

(a) All litigation arising in, or out of, the activities of the Department of Veterans Affairs or involving any employee thereof in his or her official capacity.

(b) All interpretative legal advice involving construction or application of laws, including statutes, regulations, and decisional as well as common law.

(c) All legal services, advice and assistance required to implement any law administered by the Department of Veterans Affairs.

(d) All delegations of authority and professional guidance required to meet these responsibilities.

(e) Maintenance of a system of field offices capable of providing legal advice and assistance to all Department of Veterans Affairs field installations and acting for the General Counsel as provided by Department of Veterans Affairs Regulations and instructions, or as directed by the General Counsel in special cases. This includes cooperation with U.S. Attorneys in all civil and criminal cases pertaining to the Department of Veterans Affairs and reporting to the U.S. Attorneys, as authorized, or to the General Counsel, or both, criminal matters coming to the attention of the Regional Counsel.

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(f) Other matters assigned.

[42 FR 41410, Aug. 17, 1977]

§ 14.501 Functions and responsibilities of Regional Councils.

(a) Functions and responsibilities of the Regional Councils are those set forth in this part and all other matters assigned by the General Counsel.

(b) In any matter within the jurisdiction of the General Counsel, delegated or otherwise assigned, the Regional Counsel and designated staff attorneys are authorized to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations and certify copies of public or private documents.

(c) The Regional Counsel is authorized to, and shall, under the guidance of the General Counsel, provide legal services, advice and assistance to Department of Veterans Affairs installations within the district assigned. In any area of regulatory, assigned or delegated responsibility, the Regional Counsel may delegate to staff members or other Department of Veterans Affairs attorneys authority to perform, to the extent specified, any legal function under the professional direction of the Regional Counsel. Conversely, the Regional Counsel may modify, suspend, or rescind any authority delegated hereunder.

(d) The Regional Counsel is authorized to cooperate with affiliated organizations, legislative committees, and with local and State bar associations to the end that any State law deficiencies relating to Department of Veterans Affairs operations may be removed. No commitment as to proposed legislation will be made without the approval of the General Counsel.

(e) In any case wherein the Regional Counsel is authorized to take legal action and payment of costs and necessary expenses incident thereto are involved, the administration requesting such action will pay such cost and expenses. Where it is impractical for the Regional Counsel to perform the legal service because of cost, distance, etc., the customary fee for the service rendered by a local attorney employed by the Regional Counsel will be borne by the administration requesting such action.

(f) The jurisdictions and addresses of Regional Councils are as follows:

(1) *Region 1:* (JURISDICTION) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island; (ADDRESS) VAMC, 200 Springs Road, Bldg. 61, Bedford, MA 01730.

(2) *Region 2:* (JURISDICTION) New Jersey, Metropolitan New York City; (ADDRESS) 800 Poly Place, Building 14, Brooklyn, NY 11209.

(3) *Region 3:* (JURISDICTION) District of Columbia; Fairfax, Virginia; Arlington, Virginia; Alexandria, Virginia; Martinsburg, West Virginia; and Maryland; (ADDRESS) 3900 Loch Raven Blvd., Bldg. 4, Baltimore, MD 21218.

(4) *Region 4:* (JURISDICTION) Pennsylvania, Delaware; (ADDRESS) University & Woodland Avenues, Philadelphia, PA 19104.

(5) *Region 5:* (JURISDICTION) Georgia, South Carolina; (ADDRESS) 1700 Clairmont Rd., Decatur, GA 30033-4032.

(6) *Region 6:* (JURISDICTION) Florida, Puerto Rico; (ADDRESS) P.O. Box 5005, Building 22, Room 333, Bay Pines, FL 33744.

(7) *Region 7:* (JURISDICTION) Ohio, West Virginia (excluding Martinsburg, West Virginia); (ADDRESS) 10000 Brecksville Rd., Bldg. 1, 5th Floor, Brecksville, OH 44141.

(8) *Region 8:* (JURISDICTION) Arkansas, Tennessee; (ADDRESS) 110 9th Ave., South Room A-201A, Nashville, TN 37203.

(9) *Region 9:* (JURISDICTION) Alabama, Mississippi; (ADDRESS) 1500 E. Woodrow Wilson Dr., Jackson, MS 39216.

(10) *Region 10:* (JURISDICTION) Illinois, Iowa; (ADDRESS) VA Medical Center, Bldg. 1, G Section 1st Floor, P. O. Box 1427, Hines, IL 60141.

(11) *Region 11:* (JURISDICTION) Michigan, Wisconsin; (ADDRESS) Patrick V. McNamara Federal Bldg., Suite 1460, 477 Michigan Ave., Detroit, MI 48226.

(12) *Region 12:* (JURISDICTION) Kansas, Missouri, Nebraska; (ADDRESS) 1 Jefferson Barracks Drive, St. Louis, MO 63125-4185.

(13) *Region 13:* (JURISDICTION) Oklahoma, Northern Texas; (ADDRESS) 4800 Memorial Drive, Bldg. 12, Waco, TX 76711.

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(14) *Region 14:* (JURISDICTION) Louisiana, Southern Texas; (ADDRESS) 6900 Almeda Road, Houston, TX 77030.

(15) *Region 15:* (JURISDICTION) Minnesota, North Dakota, South Dakota; (ADDRESS) VA Medical Center, One Veterans Drive, Bldg. 73, Minneapolis, MN 55417.

(16) *Region 16:* (JURISDICTION) Colorado, Wyoming, Utah, Montana; (ADDRESS) Box 25126, 155 Van Gordon Street, Denver, CO 80225.

(17) *Region 18:* (JURISDICTION) California, Hawaii, and Philippine Islands; (ADDRESS) VA Medical Center, 4150 Clement Street, Bldg. 210, San Francisco, CA 94121.

(18) *Region 19:* (JURISDICTION) Arizona, Nevada, and New Mexico; (ADDRESS) 650 E. Indian School Rd., Bldg. 24, Phoenix AZ 85012.

(19) *Region 20:* (JURISDICTION) Idaho, Oregon, Washington, Alaska; (ADDRESS) 1220 S.W. Third Ave., Suite 1224, Portland, OR 97204.

(20) *Region 21:* (JURISDICTION) New York (except Metropolitan New York City), Vermont; (ADDRESS) 120 LeBrun, Buffalo, NY 14215.

(21) *Region 22:* (JURISDICTION) Indiana, Kentucky; (ADDRESS) 575 N. Pennsylvania Street, Room 309, Indianapolis, IN 46204.

(22) *Region 23:* (JURISDICTION) North Carolina, Virginia (excluding Fairfax, Arlington, and Alexandria); (ADDRESS) Hiram H. Ward Federal Bldg., 251 N. Main Street, Winston-Salem, NC 27155.

[42 FR 41411, Aug. 17, 1977, as amended at 61 FR 7216, Feb. 27, 1996; 70 FR 52015, Sept. 1, 2005]

§ 14.502 Requests for legal opinions from Central Office.

Requests for formal legal advice, including interpretation of law or regulations, shall be made only by the Secretary, the Deputy Secretary, the Assistant Secretaries, the Deputy Assistant Secretaries, and the administration head or top staff office official having jurisdiction over the particular subject matter, or by a subordinate acting for any such official.

[54 FR 34982, Aug. 23, 1989]

§ 14.503 Requests for legal advice and assistance in other than domestic relations matters.

(a) Requests from administrative officials in the field for legal advice or assistance will be addressed to the appropriate Regional Counsel and will be in writing if requested by the Regional Counsel. Questions regarding insurance activities at St. Paul and Philadelphia should be referred to the Regional Counsel at the respective station. Except as to matters referred to in § 14.504(b), the Regional Counsel's authority to render legal advice and assistance shall extend to the release (unless otherwise instructed by the General Counsel), without prior approval of the General Counsel, of opinions on all legal questions which are either:

(1) Wholly controlled by the interpretation or application of the laws of the State or States in the district office area, or

(2) Covered by Department of Veterans Affairs precedents and opinions of the General Counsel which the Regional Counsel knows to be currently authoritative on the issues involved.

In cases covered by § 14.504(b) and all others not included in paragraph (a)(1) or (2) or paragraph (b) of this section, the Regional Counsel will prepare a tentative opinion (including identification of the benefit sought) and forward it to the General Counsel for review. When it is returned, the Regional Counsel will conform the opinion (if necessary) to the views of the General Counsel, and release it to the requesting official. The Regional Counsel may release any modified opinion as the opinion of the General Counsel.

(b) The Regional Counsel may submit to the General Counsel any legal question, opinion, or question pertinent to legal functions, upon which the views or advice of the General Counsel are desired. This request should set forth the special circumstances, contain a statement of the legal implications involved (including any Department of Veterans Affairs benefits claimed), set forth the facts out of which they arise, and cite any statutes or court decisions readily available, regulations, related opinions of the General Counsel and other matters deemed pertinent, with

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appropriate discussion. If any administration will be affected, a copy of the reply will be forwarded to that administration head.

[42 FR 41411, Aug. 17, 1977, as amended at 54 FR 34982, Aug. 23, 1989]

§ 14.504 Domestic relations questions, authority and exceptions.

(a) Regional Counsels have the same authority with respect to domestic relations questions as they do with respect to matters covered by §14.503 except as specifically excluded by the provisions of paragraph (a) of that section.

(b) In the following instances the Regional Counsel, regardless of whether State law is wholly controlling or a Department of Veterans Affairs precedent is available, will prepare a tentative opinion, researched as completely as possible with reasonably available facilities, and forward two copies thereof directly to the General Counsel for review and disposition (as provided in §14.503 respecting other than domestic relations matters):

(1) Where it is not clear under applicable State law: (i) Whether the marriage of a veteran's child or the remarriage of a veteran's widow was void without decree of annulment, or (ii) whether an annulment decree was rendered by a court with basic authority to render annulment decrees;

(2) When fraud or collusion by either party appears to have influenced the granting of an annulment decree;

(3) Cases in which there are contesting claims;

(4) Unusual situations, such as those involving proxy marriages, the law of two or more jurisdictions or of a foreign country;

(5) Cases involving difference of opinion between Regional Counsels or between a Regional Counsel and the official who submitted the question involved.

[42 FR 41411, Aug. 17, 1977]

§ 14.505 Submissions.

All submissions will set forth the question of law on which the opinion is desired, together with a complete and accurate summary of relevant facts. Files, correspondence, and other origi-

nal papers will not be submitted unless pertinent portions thereof cannot practicably be summarized or copies made and attached as exhibits.

[42 FR 41411, Aug. 17, 1977]

§ 14.507 Opinions.

(a) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Department of Veterans Affairs shall be conclusive as to all Department officials and employees with respect to the matter at issue, unless there has been a material change in controlling statute or regulation, a superseding written legal opinion by the General Counsel, or the designation on its face as "advisory only" by the General Counsel or the Deputy General Counsel acting as or for the General Counsel. Written legal opinions having conclusive effect under this section and not designated as precedent opinions pursuant to paragraph (b) of this section shall be considered by the Department of Veterans Affairs to be subject to the provisions of 5 U.S.C. 552(a)(2). Advice, recommendations, or conclusions on matters of Government or Department policy, contained within a written legal opinion, shall not be binding on Department officials and employees merely because of their being contained within a written legal opinion. Written legal opinions will be maintained in the Office of the General Counsel. Written legal opinions involving veterans' benefits under laws administered by the Department of Veterans Affairs, which pertain to a particular benefit matter, in addition to being maintained in the Office of the General Counsel, will be filed in the individual claim folder.

(b) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Department of Veterans Affairs which, in the judgment of the General Counsel or the Deputy General Counsel acting as or for the General Counsel, necessitates regulatory change, interprets a statute or regulation as a matter of first impression, clarifies or modifies a prior opinion, or is otherwise of significance beyond the matter

at issue, may be designated a “precedent opinion” for purposes of such benefits. Written legal opinions designated as precedent opinions under this section shall be considered by Department of Veterans Affairs to be subject to the provisions of 5 U.S.C. 552(a)(1). An opinion designated as a precedent opinion is binding on Department officials and employees in subsequent matters involving a legal issue decided in the precedent opinion, unless there has been a material change in a controlling statute or regulation or the opinion has been overruled or modified by a subsequent precedent opinion or judicial decision.

(c) For purposes of this section, the term *written legal opinion of the General Counsel* means a typed or printed memorandum or letter signed by the General Counsel or by the Deputy General Counsel acting as or for the General Counsel, addressed to an official or officials of the Department of Veterans Affairs stating a conclusion on a legal issue pertaining to Department of Veterans Affairs activities.

(Authority: 38 U.S.C. 501)

[54 FR 5613, Feb. 6, 1989, as amended at 61 FR 68666, Dec. 30, 1996]

LITIGATION (OTHER THAN UNDER THE FEDERAL TORT CLAIMS ACT); INDEMNIFICATION

§ 14.514 Suits by or against United States or Department of Veterans Affairs officials; indemnification of Department of Veterans Affairs employees.

(a) *Suits against United States or Department of Veterans Affairs officials.* When a suit involving any activities of the Department of Veterans Affairs is filed against the United States or the Secretary or a suit is filed against any employee of the Department of Veterans Affairs in which is involved any official action of the employee, not covered by the provisions of §§14.600 through 14.617, a copy of the petition will be forwarded to the General Counsel who will take necessary action to obtain the pertinent facts, cooperate with or receive the cooperation of the Department of Justice and, where indicated, advise the Regional Counsel of any further action required.

(b) *Counsel and representation of employees.* The Department of Justice may afford counsel and representation to Government employees who are sued individually as a result of the performance of their official duties. A civil action commenced in a State court against an employee, as the result of an action under color of his or her office, may be removed to the applicable Federal District Court. If a suit is filed against an employee as the result of the performance of his or her official duties, where the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316 are not applicable (see §14.610), and the employee desires to be represented by the U.S. Attorney, the Regional Counsel will obtain a written request to this effect from the employee and will also obtain an affidavit of the facility Director describing the incident in sufficient detail to enable a determination to be made as to whether the employee was in the scope of his or her employment at the time. These statements, together with a copy of the petition and two copies of a summary of pertinent facts, will be sent to the General Counsel, who will transmit copies thereof to the Department of Justice for appropriate action.

(c) *Indemnification.* (1) The Department of Veterans Affairs may indemnify a Department of Veterans Affairs employee, who is personally named as a defendant in any civil suit in state or Federal court or an arbitration proceeding or other proceeding seeking damages against the employee personally, where either 28 U.S.C. 2679 or 38 U.S.C. 7316 is not applicable, for any verdict, judgment, or other monetary award which is rendered against such employee; provided that: the alleged conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the Department of Veterans Affairs, as determined by the Secretary or his designee.

(2) The Department of Veterans Affairs may settle or compromise a personal damage claim against a Department of Veterans Affairs employee, in cases where the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316 are not applicable, by the payment of available

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funds, at any time; provided that: the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the Department of Veterans Affairs, as determined by the Secretary or his designee.

(3) Absent exceptional circumstances as determined by the Secretary or his designee, the Agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(4) A Department of Veterans Affairs employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the Department of Veterans Affairs General Counsel, who shall make a recommended disposition of the request. Where the Department of Veterans Affairs determines it appropriate, the Agency shall seek the view of the Department of Justice. The General Counsel shall forward the employee request for indemnification, and the accompanying documentation, with the General Counsel's recommendation to the Secretary for decision.

(5) Any payment under this section either to indemnify a Department of Veterans Affairs employee or to settle or compromise a personal damage claim shall be contingent upon the availability of appropriated funds of the Department of Veterans Affairs.

(d) *Attorney-client privilege.* Attorneys employed by the Department of Veterans Affairs who participate in any process utilized for the purpose of determining whether the Agency should request the Department of Justice to provide representation to a Department employee sued, subpoenaed or charged in his individual capacity, or whether attorneys employed by the Department of Veterans Affairs should provide assistance in the representation of such a Department employee, undertake a full and traditional attorney-client relationship with the employee with respect to application of

the attorney-client privilege. If representation is authorized, Department of Veterans Affairs attorneys who assist in the representation of an employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Any adverse information communicated by the client-employee to an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Department of Veterans Affairs, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee.

(e) *Suits by the United States.* In any instance wherein direct submission to a U.S. Attorney for institution of civil action has been authorized by the Department of Justice, the Regional Counsel will furnish the U.S. Attorney a complete report of the facts and applicable law, documentary evidence, names and addresses of witnesses and, in cases wherein Department of Veterans Affairs action has been taken, a copy of any pertinent decision rendered. The Regional Counsel will forward two copies of such report and of any proposed pleading to the General Counsel, and will render any practicable assistance requested by the U.S. Attorney.

[42 FR 41411, Aug. 17, 1977, as amended at 54 FR 5614, Feb. 6, 1989]

§ 14.515 Suits involving loan guaranty matters.

(a) In actions for debt, possession or actions similar in substance (including title actions) in which §36.4282 or §36.4319 of this chapter has been complied with, the Regional Counsel is authorized to enter the appearance of and represent the Secretary of Veterans Affairs as the attorney of record and to file claims for debt in probate proceedings without prior reference to the General Counsel. Any such action will normally be taken within the time prescribed by law as though there had been valid service of process. In all other types of cases, the Regional Counsel will not enter an appearance or file any pleading on behalf of the Secretary except in imperative emergency until authorization is received

from the General Counsel after submission of all relevant facts. In doubtful cases, the Regional Counsel will request instructions from the General Counsel, submitting copy of so much of the pleadings or other papers, together with a sufficient recital of the facts as will make clear the background, the issues, and the relief sought. The submission also will include names and addresses of adverse parties and attorneys so that immediate action may be taken if injunctive relief seems proper. Where necessary in any case to preserve rights which might be lost by default if there had been proper service of process, appropriate action will be taken by a special appearance, or, in jurisdictions where a special appearance does not serve the purpose or under State statute or decisions will constitute a general appearance for a later date, by an appearance through *amicus curiae*, to obtain an extension of time, preferably 30 days or more, in which to appear and plead without prejudice. If not feasible to obtain an extension, the Regional Counsel will explain to adverse counsel by letter, and personally, if desirable, the necessity of deferring all action and will see that the proper judge receives a signed copy of the letter before default day. The letter will point out that there is no valid service of process on the Secretary of Veterans Affairs but will not base the delay on that alone.

(b) The General Counsel or each Regional Counsel representing the General Counsel is the attorney of the Secretary of Veterans Affairs for all purposes of 38 U.S.C. 3720 and, as such, is authorized to represent the Secretary in any court action or other legal matter arising under said statutory provisions. Said authorization is subject to any applicable statutes and Executive orders concerning claims of the United States. A Regional Counsel may enter appearance in such cases, subject to the provisions of §§ 36.4282 and 36.4319 of this chapter and paragraph (a) of this section. Each Regional Counsel is authorized to contract for the employment of attorneys on a fee basis for conducting any action arising under guaranty or insurance of loans or direct loans by the Department of Veterans Affairs; or for examination and

other proper services with respect to title to and liens on real and personal property, material incident to such activities of the Department of Veterans Affairs, when, such employment is deemed by the Regional Counsel to be appropriate. the authority delegated to the Regional Counsel may be redelegated with the approval of the General Counsel.

(c) The General Counsel and each Regional Counsel, in carrying out their duties as authorized in paragraph (a) or (b) of this section, are authorized: (1) To contract for and execute, for and on behalf of the Secretary, any bond (and appropriate contract or application therefor) which is required in or preliminary to or in connection with any judicial proceeding in which the Regional Counsel is attorney for the Secretary, and to incur obligations for premiums for such bonds and (2) to do all other acts and incur all costs and expenses which are necessary or appropriate to further or protect the interests of the Secretary in or in connection with prosecuting or defending any cause in any court or tribunal within the United States, which cause arises out of or incident to the guaranty or insurance of loans, or the making or direct loans by the Department of Veterans Affairs, pursuant to 38 U.S.C. ch. 37.

(d) Except in an emergency, no Regional Counsel will initiate action for appellate review without prior approval by the General Counsel. These limitations do not preclude the filing of a motion for a new trial, appeal to intermediate court with hearing *de novo*, the giving of notice of appeal, reserving of bills of exception, or any other preliminary action in the trial court which may be necessary or appropriate to protect or facilitate, the exercise of the right of appellate review, nor do they preclude the taking of appropriate steps on behalf of the Secretary as appellee (respondent) without prior reference to the General Counsel. Upon the conclusion of the trial of a case, the Regional Counsel will report the result thereof to the General Counsel with recommendation as to seeking appellate review if the result reported is adverse to the position of the Department of Veterans Affairs

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in the litigation. The reporting Regional Counsel who recommends appellate review will include as a part of the communication, or in exhibits attached: (1) A summary of the evidence; (2) a summary of the law points to be reviewed; (3) citations of statutes and cases; (4) statements of special reasons for recommending appellate review; (5) time limitations for the action recommended; (6) requirements, if any, respecting printing of the record and briefs; (7) the estimated total expenses to be incurred by reason of the appeal, reporting separately the estimated costs for printing the brief and record so that authority for printing may be granted in accordance with the prescribed procedure, MP-1, part II, chapter 9;¹ and (8) the recommendation or a statement as to nonrecommendation by the Loan Guaranty Officer.

[42 FR 41411, Aug. 17, 1977]

§ 14.516 Escheat and post fund cases.

In any case in which the Department of Veterans Affairs is entitled to possession of assets or property under the escheat provisions of 38 U.S.C. 5502(e), the gifts provisions of 38 U.S.C. ch. 83 or the General Post Fund provisions of 38 U.S.C. ch. 85, the Regional Counsel will endeavor to obtain possession of such assets or property in any manner appropriate under local procedure and practice, other than litigation. This procedure would include exploratory inquiry of the person having custody or possession of the assets or property for the purpose of determining whether the person would be willing to turn over the property to the Department of Veterans Affairs without litigation. If unsuccessful in this effort, a complete report will be submitted by the Regional Counsel to the General Counsel so that appropriate action may be taken to obtain the assistance of the Department of Justice in the matter.

[42 FR 41411, Aug. 17, 1977]

§ 14.517 Cases affecting the Department of Veterans Affairs generally.

Regional Counsels will establish and maintain such close liaison with the

¹ Available in any Department of Veterans Affairs facility.

State and Federal courts as to insure that notice will be afforded the Department of Veterans Affairs on all cases affecting the Department of Veterans Affairs. Such information will be forwarded to the General Counsel promptly in every case.

[42 FR 41411, Aug. 17, 1977]

§ 14.518 Litigation involving beneficiaries in custody of Department of Veterans Affairs employees acting in official capacity.

(a) *Service of process generally.* An employee, at a field facility, served with a writ of habeas corpus involving a beneficiary of the Department of Veterans Affairs in the employee's custody will immediately notify the Regional Counsel of the region in addition to taking such steps as in his or her judgment are necessary for self protection.

(b) *Habeas corpus writs.* (1) If a Director of a Department of Veterans Affairs hospital concerned advises that, according, to current medical opinion, hospitalization is necessary for the veteran's safety or the safety of others, the Regional Counsel will vigorously oppose the writ at the trial court level. If the writ is granted, no further action will be taken unless so instructed by the General Counsel.

(2) If the medical opinion is that hospitalization is not required for the veteran's safety or the safety of others but continued treatment is clearly indicated in the veteran's interest, the Regional Counsel will assure that the court issuing the writ is so informed and will abide by the court's decision.

(3) If the medical opinion is that there is no danger of self injury to the veteran or others and the need for continued treatment is not clearly demonstrated, the Regional Counsel will advise the Director of the hospital concerned that the veteran should be released and will notify the veteran's attorney of the planned discharge. These cases will be handled informally to the extent practicable.

(4) Involuntary confinement of mentally ill patients in Department of Veterans Affairs installations is predicated upon the law of the State in which the installation is located. In the event the writ is filed in Federal

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Court, the Regional Counsel will cooperate with the U.S. Attorney to the end that the case is removed to the appropriate State court.

[42 FR 41411, Aug. 17, 1977, as amended at 61 FR 7216, Feb. 27, 1996]

PROSECUTION

§ 14.560 Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crime Act (18 U.S.C. 13).

The Department of Justice, or the U.S. Attorneys, are charged with the duty and responsibility of interpreting and enforcing criminal statutes, and the final determination as to whether the evidence in any case is sufficient to warrant prosecution is a matter solely for their determination. If the Department of Justice or U.S. Attorney decides to initiate action, the Regional Counsel will cooperate as may be requested. The Regional Counsel will promptly bring to the attention of the General Counsel any case wherein he or she is of the opinion that criminal or civil action should be initiated notwithstanding a decision by the U.S. Attorney not to bring such action; any case where action has been inordinately delayed; and any case which would cause significant publicity or notoriety.

(Authority: 38 U.S.C. 501)

[50 FR 24767, June 13, 1985, as amended at 68 FR 17551, Apr. 10, 2003]

§ 14.561 Administrative action prior to submission.

Before a submission is made to the U.S. Attorney in cases involving personnel or claims, the General Counsel, if the file is in Central Office, or the Regional Counsel at the regional office, hospital or center, if the file is in the regional office or other field facility, will first ascertain that necessary administrative or adjudicatory (forfeiture (see Pub. L. 86-222; 73 Stat. 452), etc.), action has been taken; except that in urgent cases such as breaches of the peace, disorderly conduct, trespass, robbery, or where the evidence may be lost by delay, or prosecution barred by the statute of limitations,

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submission to the U.S. Attorney will be made immediately.

[42 FR 41413, Aug. 17, 1977]

§ 14.562 Collections or adjustments.

When it is determined that a submission is to be made to the U.S. Attorney, no demand for payment or adjustment will be made without the advice of the U.S. Attorney. However, if, before or after submission, the potential defendant or other person tenders payment of the liability to the United States, payment will be accepted if the U.S. Attorney has no objection. If the U.S. Attorney determines that prosecution is not indicated, or when prosecution has ended, the file will be returned to the appropriate office with a report as to the action taken.

[42 FR 41413, Aug. 17, 1977]

FEDERAL TORT CLAIMS

§ 14.600 Federal Tort Claims Act—general.

(a) *Federal Tort Claims Act—overview.* The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, and 2671 through 2680) prescribes a uniform procedure for handling of claims against the United States, for money only, on account of damage to or loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred.

(b) *Applicable regulations.* The regulations issued by the Department of Justice at 28 CFR part 14 are applicable to claims asserted under the Federal Tort Claims Act, including such claims that are filed with VA. The regulations in §§ 14.600 through 14.605 of this part supplement the regulations at 28 CFR part 14.

(c) *Delegations of authority concerning claims.* Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority to consider, ascertain, adjust, determine, compromise, and settle claims asserted

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under the Federal Tort Claims Act (including the authority to execute an appropriate voucher and other necessary instruments in connection therewith) is delegated as follows:

(1) To the Under Secretary for Health, the Deputy Under Secretary for Health, Veterans Integrated Service Network (VISN) Directors, and VA Medical Facility Directors; with respect to any claim for \$2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) or those authorized to act for them with respect to any claim; provided that any award, compromise, or settlement in excess of \$300,000 shall be effected only with the prior written approval of the Attorney General or his or her designee; provided further that whenever a settlement is effected in an amount in excess of \$100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(3) To the Regional Counsels and the Deputy Assistant General Counsel (Professional Staff Group I) or those authorized to act for them with respect to any claim, provided that:

(i) Any award, compromise, or settlement in excess of \$150,000 but not more than \$300,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I); provided further that whenever a settlement is effected in an amount in excess of \$100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice; and

(ii) Any award where, for any reason, the compromise of a particular claim, as a practical matter, will, or may control the disposition of a related claim in which the amount to be paid may exceed \$150,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I); and

(iii) Any award, compromise, or settlement in excess of \$300,000 shall be effected only with the prior written approval of the General Counsel, Deputy

General Counsel, or Assistant General Counsel (Professional Staff Group I) and with the prior written approval of the Attorney General or his or her designee.

(d) *Delegations of authority to reconsider final denial of a claim.* Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority under 28 CFR 14.9 to reconsider final denials of claims under the Federal Tort Claims Act is delegated as follows:

(1) To the Regional Counsel with jurisdiction over the geographic area where the occurrence complained of arose, with respect to any claim for \$2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that any award, compromise, or settlement in excess of \$300,000 shall be effected only with the prior written approval of the Attorney General or his or her designee; provided further that whenever a settlement is effected in an amount in excess of \$100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(Authority: 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671-80; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

[64 FR 47112, Aug. 30, 1999, as amended at 74 FR 67076, Dec. 18, 2009]

§ 14.601 Investigation and development.

(a) *Development of untoward incidents.*

(1) A report of any collision involving a Government-owned vehicle which results in property damage or personal injury or death will be made by the operator of the Government vehicle immediately following the accident, on SF 91, Operator's Report of Motor Vehicle Accident, and shall be submitted to the Director of the facility involved. A copy of said report, accompanied by an executed copy of VA Form 2162, Report of Accident, will be promptly submitted by the Director to the appropriate Regional Counsel, who will authorize such additional investigation as the circumstances of the case may warrant. Forms required by other

agencies will continue to be used in addition to VA Form 2162.

(2)(i) Any incident resulting in damage to, or loss of, property, other than personal effects of a patient in a Department of Veterans Affairs facility, or in personal injury or death, due apparently or allegedly to the negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her office or employment, or damage to or loss of Government-owned property caused by other than a Department of Veterans Affairs employee acting within the scope of his or her office or employment, will be immediately reported. The Director of the facility where such occurrence took place will promptly transmit a copy of the report to the appropriate Regional Counsel who will authorize such additional investigation as the circumstances of the case may warrant.

(ii) Where the incident involves the loss of personal effects of a patient in a Department of Veterans Affairs facility, the Director will assist the patient in completing an SF 95, Claim for Damage, Injury, or Death, and will advise the patient that it will be forwarded immediately to the appropriate Regional Counsel for consideration. The Director will forward along with the claim a brief summary of the facts, as well as his or her recommendation, to the Regional Counsel. The Regional Counsel will expedite the processing of claims of this nature.

(3) An employee will be designated at each facility to investigate motor vehicle collisions and other incidents involving damage to, or loss of privately owned property or personal injury or death, apparently or allegedly resulting from the negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her employment, other than investigation of alleged malpractice, or damage to or loss of Government-owned property caused by other than Department of Veterans Affairs employees. In Central Office, the designation will be made by the Director of Support Service, Office of the Assistant Secretary for Human Resources and Administration, and at all other facilities, by the Director.

(4) The Regional Counsel for the area in which a field facility is located will be responsible for processing claims involving motor vehicle collisions and other occurrences resulting in property damage, personal injury, or death, within such area. The Baltimore Regional Counsel will also have jurisdiction, except as otherwise provided in paragraph (a)(3) of this section over incidents occurring in Department of Veterans Affairs Central Office.

(b) *Development of medical malpractice claims.* In medical malpractice cases, the Regional Counsel may refer a claim to the Under Secretary for Health via the Director, Medical-Legal Affairs for review and for professional opinion or guidance. In the consideration of claims involving a medical question, the responsible Regional Counsel involved and the General Counsel will be guided by the views of the Under Secretary for Health as to the standard of medical care and treatment, the nature and extent of the injuries, the degree of temporary or permanent disability, the prognosis, the necessity for future treatment or physical rehabilitation, and any other pertinent medical aspects of a claim.

(Authority: 28 U.S.C. 2671–2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

[42 FR 41414, Aug. 17, 1977. Redesignated and amended at 61 FR 27784, June 3, 1996; 64 FR 47112, Aug. 30, 1999]

§ 14.602 Requests for medical information.

(a) Where there is indication that a tort claim will be filed, medical records or other information shall not be released without approval of the Regional Counsel.

(b) Request for medical records, documents, reports, or other information shall be handled in accordance with the provisions of § 1.511(a)(2) of this chapter.

[38 FR 5470, Mar. 1, 1973, as amended 42 FR 41415, Aug. 17, 1977. Redesignated at 61 FR 27784, June 3, 1996, as amended at 64 FR 47112, Aug. 30, 1999]

§ 14.603 Disposition of claims.

Setoff for cost of unauthorized medical treatment. In any tort claim administratively settled or compromised where the claimant owes the Department of

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Veterans Affairs for unauthorized medical treatment, there will be included in the tort claim award the amount of the claimant's indebtedness to the Government. The amount of the indebtedness is for credit to the appropriation account from which the services were provided. The voucher prepared for settlement of the claim will specify the amount to be deposited to the credit of the designated account and that the balance of the award be paid to the claimant.

[42 FR 41416, Aug. 17, 1977, as amended at 43 FR 2722, Jan. 19, 1978. Redesignated and amended at 61 FR 27784, June 3, 1996]

§ 14.604 Filing a claim.

(a) Each person who inquires as to the procedure for filing a claim against the United States, predicated on a negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her employment, will be furnished a copy of SF 95, Claim for Damage, Injury, or Death. The claimant will be advised to submit the executed claim directly to the Regional Counsel having jurisdiction of the area wherein the occurrence complained of took place. He or she will also be advised to submit the information prescribed by 28 CFR 14.4 to the extent applicable. If a claim is presented to the Department of Veterans Affairs which involves the actions of employees or officers of other agencies, it will be forwarded to the Department of Veterans Affairs General Counsel, for appropriate action in accord with 28 CFR 14.2.

(b) A claim shall be deemed to have been presented when the Department of Veterans Affairs receives from a claimant, his or her duly authorized agent or legal representative, an executed SF 95, or other written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death: *Provided, however*, That before compromising or settling any claim, an executed SF 95 shall be obtained from the claimant.

(c) A claim presented in compliance with paragraphs (a) and (b) of this section may be amended by the claimant at any time prior to final Department of Veterans Affairs action or prior to

the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Department of Veterans Affairs shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the amendment.

(Authority: 28 U.S.C. 1346(b)(1), 2401(b), 2671-2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

[42 FR 41414, Aug. 17, 1977, as amended at 61 FR 27784, June 3, 1996; 64 FR 47112, Aug. 30, 1999]

§ 14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.

(a)(1) Section 2679 of title 28 U.S.C., provides that no suit will lie against a Federal employee, or the employee's estate, for damage to property, personal injury, or death resulting from his or her wrongful act or omission while acting within the scope of his or her office or employment with the Federal Government. An action against the United States under 28 U.S.C. 2671-2680 is the exclusive remedy under these circumstances.

(2) Section 7316 of title 38 U.S.C., provides that (i) where there is remedy against the United States under 28 U.S.C. 2671-2680, or (ii) where proceedings for compensation or other benefits from the United States are provided by law, and the availability of such benefits precludes a remedy under 28 U.S.C. 2671-2680 (as is the case, for example, in the Federal Employees' Compensation Act, 5 U.S.C. 8101, *et seq.*), such recourse is the exclusive remedy for property damage, personal injury, or death allegedly occurring as a result of malpractice or negligence committed by a physician, dentist, nurse, physician's assistant, dentist's assistant, pharmacist or paramedical

(for example, medical and dental technicians, nursing assistants, and therapists), or other supporting personnel, while furnishing medical care and treatment in the exercise of duties in or for the Veterans Health Administration. Accordingly, a malpractice or negligence suit for property damage, personal injury, or death will not lie against such personnel under the circumstances set forth in this subparagraph.

(b) The Department of Justice will defend any civil action or proceeding brought in any court against persons referred to in paragraph (a) (1) or (2) of this section under the circumstances set forth therein. Accordingly, when a suit is filed against any employee of the Department of Veterans Affairs as a result of a wrongful act or omission arising out of employment with the Government, or as a result of furnishing medical or dental care and treatment in or for the Veterans Health Administration, the employee shall immediately forward a copy of all papers served on him or her to the Regional Counsel having jurisdiction over the area in which the employee works. The employee will also promptly forward to the appropriate Regional Counsel a signed statement indicating whether he or she desires the Department of Justice to provide representation, and to otherwise protect his or her interests as provided for by law. Even though there may not have been service, if an employee learns that a suit arising from either of the above-described circumstances has been filed against him or her, the employee shall immediately so advise the appropriate Regional Counsel, provide the Regional Counsel with a brief description of the facts involved, and state whether he or she desires Federal intervention.

(c) Upon receipt of notice that suit has been filed against an employee of the Department of Veterans Affairs who is entitled to protection under 28 U.S.C. 2679 or 38 U.S.C. 7316, the Regional Counsel having jurisdiction over the place where the employee works will conduct a preliminary investigation, which will include an affidavit by the employee's supervisor as to whether the defendant-employee was acting in the scope of his or her employment

at the time of the incident, and a request from the defendant-employee for representation. The affidavit will contain a factual description of the employee's duties and responsibilities at the time of the incident and should describe the incident in question. Upon receipt of such information, the Regional Counsel will make a preliminary determination as to whether such suit comes within the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316. The Regional Counsel will refer the matter to the appropriate U.S. Attorney with a recommendation as to whether the employee is eligible for protection under 28 U.S.C. 2679 or 38 U.S.C. 7316. The U.S. Attorney will decide whether the Department of Veterans Affairs employee is eligible for the protection. The Regional Counsel will submit to the General Counsel a preliminary report in duplicate containing the information furnished the U.S. Attorney. In all such cases, the Regional Counsel will conduct a complete investigation of the facts and law. Two copies of the investigation report will be sent to the General Counsel and one copy will be sent to the appropriate U.S. Attorney. The General Counsel, through the Regional Counsel, will keep the employee advised of the action being taken concerning the suit. In the event that the U.S. Attorney or the Department of Justice determines that the employee is not eligible for immunization pursuant to one of the aforementioned provisions, the General Counsel's office, through the Regional Counsel, will advise the employee and will call to his or her attention the discretionary provisions of section 7316(e) of title 38 U.S.C.

(d) Where a civil action is commenced in a State court against a Department of Veterans Affairs employee, and the matter is within the purview of either 28 U.S.C. 2679, or 38 U.S.C. 7316, the Department of Justice will be asked to remove such suit to the appropriate Federal District Court before trial, where it will be deemed an action against the United States. The defendant employee will be dismissed from the suit. After such removal, the United States has available all defenses to which it would have been entitled if the action had originally been

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commenced against the United States in the proper Federal District Court. Should a Federal District Court determine that the Department of Veterans Affairs employee whose acts or omissions gave rise to the suit was not acting within the scope of his or her office or employment, and therefore not eligible for immunization as provided for in the aforementioned section, the case will be remanded to the State court from which it was removed, the employee will be reinstated as the defendant, and the United States will be dismissed from the suit. Where the employee has been reinstated as the defendant under such circumstances, in order to protect any rights which he or she may have under 38 U.S.C. 7316(e), he or she shall immediately notify the General Counsel, through the local Regional Counsel. Through the Regional Counsel, the General Counsel will call the employee's attention to the discretionary conditional indemnification provisions of section 7316(e).

(e) Under the authority of 38 U.S.C. 7316(e), the Secretary of Veterans Affairs may pay for monetary damages sustained by or assessed against an individual (or his or her estate) described in paragraph (a)(2) of this section, as the result of any suit instituted against such individual which is not cognizable under the provisions of 28 U.S.C. 2671-2680 because the individual was assigned to a foreign country, the said individual was detailed to a State or political division thereof, or the cause of action was specifically excluded under the provisions of 28 U.S.C. 2680(h); *Provided*, That the amount of damages sustained is reasonable when compared with similar cases, litigated or settled, and the United States was given a reasonable opportunity to defend such individual and to participate in settlement negotiations.

(Authority: 28 U.S.C. 2671-2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)
[42 FR 41417, Aug. 17, 1977. Redesignated and amended at 61 FR 27784, June 3, 1996; 64 FR 47112, Aug. 30, 1999]

ADMINISTRATIVE SETTLEMENT OF TORT CLAIMS ARISING IN FOREIGN COUNTRIES

§ 14.615 General.

(a) *Authority*. Section 515(b), title 38 U.S.C., provides that the Secretary of Veterans Affairs may pay tort claims, in the manner authorized in the first paragraph of section 2672 of title 28 U.S.C., when such claims arise in foreign countries in connection with Department of Veterans Affairs operations abroad.

(b) *Action by claimant*. Claims for property loss or damage may be filed by the owner of the property or his or her duly authorized agent or legal representative. If the property was insured and the insurer is subrogated, in whole or in part, and if both the owner and the insurer desire to file a claim for their respective losses they should join in one claim. Claims for personal injury may be filed by the injured person or his or her agent or legal representative. Claims for death may be filed by the personal representative of the decedent or any other legally qualified person. When filed by an agent or legal representative, the claim must show the title or capacity of the person representing the claimant and be accompanied by evidence of the appointment of such person as agent, legal representative, executor/executrix, administrator/administratrix, guardian, or other fiduciary.

(c) *Time for filing*. A claim may not be allowed under 38 U.S.C. 515(b) unless it is presented to the Secretary or his or her designee within 2 years after the claim accrues.

(Authority: 28 U.S.C. 2671-2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)

[38 FR 5473, Mar. 1, 1973, as amended at 42 FR 41417, Aug. 17, 1977; 64 FR 47112, Aug. 30, 1999]

§ 14.616 Form and place of filing claim.

(a) *Form of claim*. Claims arising under 38 U.S.C. 515(b) will be prepared in the form of a sworn statement and submitted in duplicate. The original copy of the claim will be sworn to or affirmed before an official with authority to administer oaths or affirmations and will contain the following information, at least:

(1) The name and address of claimant;

(2) The amount claimed for injury or death, and for property loss or damage;

(3) If property was lost or damaged, the amount paid or payable by the insurer together with the name of the insurer;

(4) A detailed statement of the facts and circumstances giving rise to the claim, including the time, place, and date of the accident or incident;

(5) If property was involved, a description of the property and the nature and extent of the damage and the cost of repair or replacement based upon at least two impartial estimates;

(6) If personal injury was involved, the nature of the injury, the cost of medical and/or hospital services, and time and income lost due to the injury;

(7) If death is involved, the names and ages of claimants and their relationship to decedent;

(8) The name and official position of the employee of the United States allegedly responsible for the accident or injury, or loss or damage of property;

(9) The names and addresses of any witnesses to accident or incident; and

(10) If desired, the law applicable to the claim.

(b) *Place of filing claim.* Claims arising in the Philippines under 38 U.S.C. 515(b) will be filed with the Director, Department of Veterans Affairs Regional Office, Manila, Republic of the Philippines. Claims arising in other foreign countries will be filed with the American Embassy or Consulate nearest the place where the incident giving rise to the claim took place.

(c) *Evidence to be submitted by claimant—*(1) *General.* The amount claimed on account of damage to or loss of property or on account of personal injury or death shall, so far as possible, be substantiated by competent evidence. Supporting statements, estimates and the like will, if possible, be obtained from disinterested parties. All evidence will be submitted in duplicate. Original evidence or certified copies shall be attached to the original copy of the claim, and simple copies shall be attached to the other copy of the claim. All documents in other than the English language will be accompanied by English translations.

(2) *Personal injury or death.* In support of claims for personal injury or death, the claimant will submit, as may be appropriate, itemized bills for medical, hospital, or burial expenses actually incurred; a statement from the claimant's or decedent's employer as to time and income lost from work; and a written report by the attending physician with respect to the nature and extent of the injury, the nature and extent of treatment, the degree of disability, the period of hospitalization or incapacitation, and the prognosis as to future treatment, hospitalization and the like.

(3) *Damage to personal property.* In support of claims for damage to personal property which has been repaired, the claimant will submit an itemized receipt, or, if not repaired, itemized estimates of the cost of repairs by two reliable parties who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to cost, age of the property and salvage value.

(4) *Damage to real property.* In support of claims for damage to land, trees, buildings, fences, or other improvements to real property, the claimant will submit an itemized receipt if repairs have been made, or, if repairs have not been made, itemized estimates of the cost of repairs by two reliable persons who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to the value of the improvements both before and after the accident or incident and the cost of replacements.

(5) *Damage to crops.* In support of claims for damage to crops, the claimant will submit an itemized signed statement showing the number of acres, or other unit measure of crop damaged, the probable yield per unit, the gross amount which would have been realized from such probable yield and an estimate of the costs of cultivating, harvesting and marketing the crop. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to

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the current year's crop will also be stated.

(Approved by the Office of Management and Budget under control number 2900-0437)

[38 FR 5474, Mar. 1, 1973, as amended at 42 FR 41418, Aug. 17, 1977; 49 FR 32848, Aug. 17, 1984]

§ 14.617 Disposition of claims.

(a) *Disposition of claims arising in Philippines.* All claims arising under 38 U.S.C. 515(b) in the Philippines, including a complete investigation report and a brief résumé of applicable law, will be forwarded directly by the Director to the General Counsel, together with a recommendation as to disposition.

(b) *Disposition of claims arising in foreign countries other than the Philippines.* When a claim is received in an American Embassy or Consulate, the Embassy or Consulate receiving such claim shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, including a résumé of applicable law and a recommendation regarding allowance or disallowance of the claim, through regular channels of the Department of State to the General Counsel, Department of Veterans Affairs Central Office, Washington, DC.

(c) *Payment of claims.* Upon determining that there is liability on the part of the United States under 38 U.S.C. 515(b), the General Counsel, or such other personnel as may be designated by the Secretary, will take the necessary action to effect payment.

[38 FR 5474, Mar. 1, 1973, as amended at 42 FR 41418, Aug. 17, 1977]

CLAIMS FOR DAMAGE TO OR LOSS OF GOVERNMENT PROPERTY

§ 14.618 Collection action.

(a) In a case where the Regional Counsel determines that damage to or loss of Government property under the jurisdiction of the Department of Veterans Affairs resulted from the negligence or other legal wrong of a person other than an employee of the United States, while acting within the scope of his or her employment, the Regional Counsel will request payment in full of

the amount of damage from the person liable therefor or such person's insurer.

(b) The Regional Counsel may collect, compromise, suspend, or terminate collection action on any such claim as is authorized under § 2.6(e)(4)(ii) of this chapter, in conformity with the standards in § 1.900 series of this chapter. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated and does not exceed \$100,000, will be referred by the Regional Counsel to the appropriate U.S. attorney along with the information required by §§ 1.951 through 1.953 of this chapter. Any claim in excess of \$100,000 for which payment in full has not been made, will be transmitted along with the report required by § 14.601(a)(2)(i), a report on credit data (§ 1.952 of this chapter), and any other pertinent information, to the General Counsel for appropriate action.

(c) The General Counsel or those designated in § 2.6(e)(4) of this chapter will take action to collect in full on such claims and to compromise, suspend, or terminate any such claims not exceeding \$100,000 in conformity with § 1.900 series of this chapter. Any such claims not compromised, or on which collection actions is not suspended or terminated and does not exceed \$100,000, will be referred to the appropriate U.S. Attorney. Any such claims in excess of \$100,000, which have not been collected in full, will be referred by the General Counsel to the Department of Justice for appropriate action.

(d) The provisions of paragraphs (a) through (c) of this section are not applicable to the collection of claims involving damage to General Services Administration Motor Pool System vehicles issued for Department of Veterans Affairs use. Whenever there is any indication that a party other than the operator of a motor pool system vehicle is at fault in an accident, all documents and data pertaining to the accident and its investigation will be submitted to the General Services Administration Regional Counsel of the region that issued the vehicle who has jurisdiction over such matters. Whenever a motor pool system vehicle is involved in an accident, resulting in damage to the property of, or injury to the person

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of a third party, and the third party asserts a claim against the Department of Veterans Affairs based upon the alleged negligence of the vehicle operator, the claim will be considered under § 14.600 *et seq.*

[38 FR 5474, Mar. 1, 1973, as amended at 42 FR 41418, Aug. 17, 1977; 61 FR 27784, June 3, 1996]

CLAIMS FOR COST OF MEDICAL CARE AND SERVICES

§ 14.619 Collection action.

(a) In a case where the Regional Counsel determines that medical care and services were furnished as a result of the negligence of a third party, other than an employee of the United States while acting in the scope of his or her employment, the Regional Counsel will request payment in full of the amount of damage from the person liable therefor or such person's insurer.

(b) The Regional Counsel may collect, compromise, suspend, or terminate collection activity on any such claim as is authorized under § 2.6(e)(3) of this chapter. However, claims in excess of \$100,000 may be compromised, settled, or waived only with the prior approval of the Department of Justice, which will be obtained through the General Counsel. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated will be referred by the Regional Counsel to the appropriate U.S. Attorney along with appropriate information necessary to protect the interest of the Government. A copy of the referral to the U.S. Attorney will be sent to the General Counsel's office.

(c) In a case where the Regional Counsel determines that a claim is appropriate under the provisions of § 17.48(g) of this chapter or 38 U.S.C. 1729, for the cost of medical, hospital, or surgical care, the Regional Counsel may assert the claim and collect payment in full. The Regional Counsel may compromise, settle, waive, suspend or terminate collection activity on any claim not exceeding \$100,000. Claims in excess of \$100,000 may only be compromised, settled, or waived with the approval of the General Counsel. Any such claim not compromised, settled, or waived or where collection action is not suspended or terminated

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will be referred to the appropriate United States Attorney with sufficient data to enable that office to protect the interest of the Government. A copy of all materials referred to the United States Attorney will be furnished the General Counsel.

(Authority: 38 U.S.C. 1729(c)(1))

[42 FR 41418, Aug. 17, 1977, as amended at 43 FR 10560, Mar. 14, 1978; 51 FR 23227, June 26, 1986; 58 FR 39153, July 22, 1993; 61 FR 27785, June 3, 1996]

REPRESENTATION OF DEPARTMENT OF VETERANS AFFAIRS CLAIMANTS; RECOGNITION OF ORGANIZATIONS, ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS; RULES OF PRACTICE AND INFORMATION CONCERNING FEES, 38 U.S.C. 5901-5905

§ 14.626 Purpose.

The purpose of the regulation of representatives, agents, attorneys, and other individuals is to ensure that claimants for Department of Veterans Affairs (VA) benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

[73 FR 29870, May 22, 2008]

§ 14.627 Definitions.

As used in regulations on representation of VA claimants:

(a) *Accreditation* means the authority granted by VA to representatives, agents, and attorneys to assist claimants in the preparation, presentation, and prosecution of claims for VA benefits.

(b) *Agency of original jurisdiction* means the VA activity or administration that made the initial determination on a claim or matter or that handles any subsequent adjudication of a claim or matter in the first instance, and includes the Office of the General Counsel with respect to proceedings under part 14 of this chapter to suspend or cancel accreditation or to review fee agreements.

(c) *Agent* means a person who has met the standards and qualifications outlined in § 14.629(b).

(d) *Attorney* means a member in good standing of a State bar who has met

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the standards and qualifications in § 14.629(b).

(e) *Benefit* means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by VA pertaining to veterans, dependents, and survivors.

(f) *Cancellation* means termination of authority to represent claimants.

(g) *Claim* means application made under title 38 U.S.C., and implementing directives, for entitlement to VA benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(h) *Claimant* means a person who has filed or has expressed to a representative, agent, or attorney an intention to file a written application for determination of entitlement to benefits provided under title 38, United States Code, and implementing directives.

(i) *Complete claims service* means representation of each claimant requesting assistance, from the initiation of a claim until the completion of any potential administrative appeal.

(j) *Cross-accreditation* means an accreditation based on the status of a representative as an accredited and functioning representative of another organization.

(k) *Facilities* means equipment and furnishings that promote the efficient operation of an office, and adjacent accommodations, which are needed to facilitate access to office space.

(l) *Recognition* means certification by VA of organizations to assist claimants in the preparation, presentation, and prosecution of claims for VA benefits.

(m) *Representation* means the acts associated with representing a claimant in a proceeding before VA pursuant to a properly executed and filed VA Form 21-22, "Appointment of Veterans Service Organization as Claimant's Representative," or VA Form 21-22a, "Appointment of Individual as Claimant's Representative."

(n) *Representative* means a person who has been recommended by a recognized organization and accredited by VA.

(o) *Service* means the delivery of a motion, response, or reply to a person or entity to which it is directed. Proof of service consists of a statement by the person who made service certifying

the date and manner of service, the names of the persons served, and the addresses of the place of delivery. For service by mail, proof of service shall include the date and manner by which the document was mailed.

(p) *State* includes any State, possession, territory, or Commonwealth of the United States, and the District of Columbia.

(q) *Suspension* means temporary withholding of authority to represent claimants.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

[53 FR 52419, Dec. 28, 1988, as amended at 68 FR 8544, Feb. 24, 2003; 73 FR 29870, May 22, 2008]

§ 14.628 Recognition of organizations.

Authorized officers of an organization may request recognition by letter to the Secretary of Veterans Affairs.

(a) *National organization*. An organization may be recognized as a national organization if:

(1) It was recognized by the Department of Veterans Affairs prior to October 10, 1978, and continues to satisfy the requirements of § 14.628(d) of this section, or

(2) It satisfies the following requirements:

(i) Requirements set forth in paragraph (d) of this section, including information required to be submitted under that paragraph;

(ii) In the case of a membership organization, membership of 2,000 or more persons, as certified by the head of the organization;

(iii) Capability and resources to provide representation to a sizable number of claimants;

(iv) Capability to represent claimants before the Board of Veterans' Appeals in Washington, D.C.; and

(v) Geographic diversification, *i.e.*, either one or more posts, chapters, or offices in at least ten states, or one or more members in at least twenty states.

(b) *State organization*. An organization created and primarily funded by a State government for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) *Regional or local organization.* An organization other than a State or national organization as set forth in paragraphs (a) and (b) of this section may be recognized when the Department of Veterans Affairs has determined that it is a veterans' service organization primarily involved in delivering services connected with either title 38 U.S.C., benefits and programs or other Federal and State programs designed to assist veterans. The term *veteran* as used in this paragraph shall include veterans, former armed forces personnel, and the dependents or survivors of either. Further, the organization shall provide responsible, qualified representation in the preparation, presentation, and prosecution of claims for title 38 U.S.C., benefits.

(d) *Requirements for recognition.* (1) In order to be recognized under this section, an organization shall meet the following requirements:

(i) Have as a primary purpose serving veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit a statement establishing the purpose of the organization and that veterans would benefit by recognition of the organization.

(ii) Demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) The number of members and number of posts, chapters, or offices and their addresses;

(B) A copy of the articles of incorporation, constitution, charter, and by-laws of the organization, as appropriate;

(C) A description of the services performed or to be performed in connection with programs administered by the Department of Veterans Affairs, with an approximation of the number of veterans, survivors, and dependents served or to be served by the organization in each type of service designated; and

(D) A description of the type of services, if any, performed in connection

with other Federal and State programs which are designed to assist former Armed Forces personnel and their dependents, with an approximation of the number of veterans, survivors, and dependents served by the organization under each program designated.

(iii) Commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting particular veterans' services (VA may, in cases where it deems necessary, require an audited financial statement); and

(B) A statement indicating that use of the organization's funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before the Department of Veterans Affairs.

(iv) Maintain a policy and capability of providing complete claims service to each claimant requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service. Except as provided in paragraphs (d)(1)(iv)(A) and (B) of this section, in establishing that it meets this requirement, an organization requesting recognition shall submit evidence of its capability to represent claimants before Department of Veterans Affairs regional offices and before the Board of Veterans' Appeals.

(A) If an organization does not intend to represent claimants before the Board of Veterans' Appeals, the organization shall submit evidence of an association or agreement with a recognized service organization for the purpose of representation before the Board of Veterans' Appeals, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning the availability of alternative sources of claims service.

(B) If an organization does not intend to represent each claimant requesting

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assistance, the organization shall submit a statement of its policy concerning the selection of claimants and the proposed method of informing claimants of this policy, with advice concerning the availability of alternative sources of claims service.

NOTE TO PARAGRAPH (d)(1)(iv): An organization may be considered to provide complete claims service notwithstanding the exercise of discretion to determine that provision of representation in a particular case is impracticable or inappropriate because, under the circumstances, the facts or law do not support the filing of a claim or appeal, an appropriate representative-claimant relationship cannot be maintained, or representation would give rise to a conflict of interest on the part of the organization.

(v) Take affirmative action, including training and monitoring of accredited representatives, to ensure proper handling of claims. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) A statement of the skills, training, and other qualifications of current paid or volunteer staff personnel for handling veterans' claims; and

(B) A plan for recruiting and training qualified claim representatives, including the number of hours of formal classroom instruction, the subjects to be taught, the period of on-the-job training, a schedule or timetable for training, the projected number of trainees for the first year, and the name(s) and qualifications of the individual(s) primarily responsible for the training.

(2) In addition, the organization requesting recognition shall supply:

(i) A statement that neither the organization nor its accredited representatives will charge or accept a fee or gratuity for service to a claimant and that the organization will not represent to the public that Department of Veterans Affairs recognition of the organization is for any purpose other than claimant representation; and

(ii) The names, titles, and addresses of officers and the official(s) authorized to certify representatives.

(e) *Recognition or denial.* Only the Secretary is authorized to recognize organizations. Notice of the Secretary's determination on a request for recognition will be sent to an organization

within 90 days of receipt of all information to be supplied.

(f) *Requests for further information.* The Secretary or the Secretary's designee may request further information from any recognized organization, including progress reports, updates, or verifications.

(Authority: 38 U.S.C. 501(a), 5902)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0439)

[53 FR 52419, Dec. 28, 1988, as amended at 57 FR 33878, July 31, 1992; 68 FR 8544, Feb. 24, 2003]

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

The Assistant General Counsel of jurisdiction or his or her designee will conduct an inquiry and make an initial determination regarding any question relating to the qualifications of a prospective service organization representative, agent, or attorney. If the Assistant General Counsel or designee determines that the prospective service organization representative, agent, or attorney meets the requirements for accreditation in paragraphs (a) or (b) of this section, notification of accreditation will be issued by the Assistant General Counsel or the Assistant General Counsel's designee and will constitute authority to prepare, present, and prosecute claims before an agency of original jurisdiction or the Board of Veterans' Appeals. If the Assistant General Counsel determines that the prospective representative, agent, or attorney does not meet the requirements for accreditation, notification will be issued by the Assistant General Counsel concerning the reasons for disapproval, an opportunity to submit additional information, and any restrictions on further application for accreditation. If an applicant submits additional evidence, the Assistant General Counsel will consider such evidence and provide further notice concerning his or her final decision. The determination of the Assistant General Counsel regarding the qualifications of a prospective service organization representative, agent, or attorney may be

appealed by the applicant to the General Counsel. Appeals must be in writing and filed with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Assistant General Counsel's decision was mailed. In deciding the appeal, the General Counsel's decision shall be limited to the evidence of record before the Assistant General Counsel. A decision of the General Counsel is a final agency action for purposes of review under the Administrative Procedure Act, 5 U.S.C. 701-706.

(a) *Service Organization Representatives.* A recognized organization shall file with the Office of the General Counsel VA Form 21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. The form must be signed by the prospective representative and the organization's certifying official. For each of its accredited representatives, a recognized organization's certifying official shall complete, sign and file with the Office of the General Counsel, not later than five years after initial accreditation through that organization or the most recent recertification by that organization, VA Form 21 to certify that the representative continues to meet the criteria for accreditation specified in paragraph (a)(1), (2) and (3) of this section. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation and has demonstrated an ability to represent claimants before the VA;

(2) Is either a member in good standing or a paid employee of such organization working for it not less than 1,000 hours annually; is accredited and functioning as a representative of another recognized organization; or, in the case of a county veteran's service officer recommended by a recognized State organization, meets the following criteria:

(i) Is a paid employee of the county working for it not less than 1,000 hours annually;

(ii) Has successfully completed a course of training and an examination which have been approved by a Re-

gional Counsel with jurisdiction for the State; and

(iii) Will receive either regular supervision and monitoring or annual training to assure continued qualification as a representative in the claim process; and

(3) Is not employed in any civil or military department or agency of the United States.

(Authority: 38 U.S.C. 501(a), 5902)

(b) *Accreditation of Agents and Attorneys.*(1) No individual may assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by VA for such purpose.

(i) For agents, the initial accreditation process consists of application to the General Counsel, self-certification of admission information concerning practice before any other court, bar, or State or Federal agency, an affirmative determination of character and fitness by VA, and a written examination.

(ii) For attorneys, the initial accreditation process consists of application to the General Counsel, self-certification of admission information concerning practice before any other court, bar, or State or Federal agency, and a determination of character and fitness. The General Counsel will presume an attorney's character and fitness to practice before VA based on State bar membership in good standing unless the General Counsel receives credible information to the contrary.

(iii) As a further condition of initial accreditation, both agents and attorneys are required to complete 3 hours of qualifying continuing legal education (CLE) during the first 12-month period following the date of initial accreditation by VA. To qualify under this subsection, a CLE course must be approved for a minimum of 3 hours of CLE credit by any State bar association and, at a minimum, must cover the following topics: representation before VA, claims procedures, basic eligibility for VA benefits, right to appeal, disability compensation (38 U.S.C. Chapter 11), dependency and indemnity compensation (38 U.S.C. Chapter 13), and pension (38 U.S.C. Chapter 15).

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Upon completion of the initial CLE requirement, agents and attorneys shall certify to the Office of the General Counsel in writing that they have completed qualifying CLE. Such certification shall include the title of the CLE, date and time of the CLE, and identification of the CLE provider, and shall be submitted to VA as part of the annual certification prescribed by § 14.629(b)(4).

(iv) To maintain accreditation, agents and attorneys are required to complete an additional 3 hours of qualifying CLE on veterans benefits law and procedure not later than 3 years from the date of initial accreditation and every 2 years thereafter. To qualify under this subsection, a CLE course must be approved for a minimum of 3 hours of CLE credit by any State bar association. Agents and attorneys shall certify completion of the post-accreditation CLE requirement in the same manner as described in § 14.629(b)(1)(iii).

(2) An individual desiring accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claim(s) before the Department. An individual desiring accreditation as an agent or attorney must file a completed application (VA Form 21a) with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, on which the applicant submits the following:

(i) His or her full name and home and business addresses;

(ii) Information concerning the applicant's military and civilian employment history (including character of military discharge, if applicable);

(iii) Information concerning representation provided by the applicant before any department, agency, or bureau of the Federal government;

(iv) Information concerning any criminal background of the applicant;

(v) Information concerning whether the applicant has ever been determined mentally incompetent or hospitalized as a result of a mental disease or dis-

ability, or is currently under treatment for a mental disease or disability;

(vi) Information concerning whether the applicant was previously accredited as a representative of a veterans service organization and, if so, whether that accreditation was terminated or suspended by or at the request of that organization;

(vii) Information concerning the applicant's level of education and academic history;

(viii) The names, addresses, and phone numbers of three character references; and

(ix) Information relevant to whether the applicant for accreditation as an agent has any physical limitations that would interfere with the completion of a comprehensive written examination administered under the supervision of a VA Regional Counsel (agents only); and

(x) Certification that the applicant has satisfied the qualifications and standards required for accreditation as prescribed by VA in this section, and that the applicant will abide by the standards of conduct prescribed by VA in § 14.632 of this part.

(3) Evidence showing lack of good character and reputation includes, but is not limited to, one or more of the following: Conviction of a felony, conviction of a misdemeanor involving fraud, bribery, deceit, theft, or misappropriation; suspension or disbarment from a court, bar, or Federal or State agency on ethical grounds; or resignation from admission to a court, bar, or Federal or State agency while under investigation to avoid sanction.

(4) As a further condition of initial accreditation and annually thereafter, each person seeking accreditation as an agent or attorney shall submit to VA information about any court, bar, or Federal or State agency to which the agent or attorney is admitted to practice or otherwise authorized to appear. Applicants shall provide identification numbers and membership information for each jurisdiction in which the applicant is admitted and a certification that the agent or attorney is in good standing in every jurisdiction in which admitted. After accreditation, agents and attorneys must notify VA within 30 days of any change

in their status in any jurisdiction in which they are admitted to appear.

(5) VA will not accredit an individual as an agent or attorney if the individual has been suspended by any court, bar, or Federal or State agency in which the individual was previously admitted and not subsequently reinstated. However, if an individual remains suspended in a jurisdiction on grounds solely derivative of suspension or disbarment in another jurisdiction to which he or she has been subsequently reinstated, the General Counsel may evaluate the facts and grant or reinstate accreditation as appropriate.

(6) After an affirmative determination of character and fitness for practice before the Department, applicants for accreditation as a claims agent must achieve a score of 75 percent or more on a written examination administered by VA as a prerequisite to accreditation. No applicant shall be allowed to sit for the examination more than twice in any 6-month period.

(c) *Representation by Attorneys, Law Firms, Law Students and Paralegals.* (1) After accreditation by the General Counsel, an attorney may represent a claimant upon submission of a VA Form 21-22a, "Appointment of Attorney or Agent as Claimant's Representative."

(2) If the claimant consents in writing, an attorney associated or affiliated with the claimant's attorney of record or employed by the same legal services office as the attorney of record may assist in the representation of the claimant.

(3) A legal intern, law student, or paralegal may not be independently accredited to represent claimants under this paragraph. A legal intern, law student, or certified paralegal may assist in the preparation, presentation, or prosecution of a claim, under the direct supervision of an attorney of record designated under §14.631(a), if the claimant's written consent is furnished to VA. Such consent must specifically state that participation in all aspects of the claim by a legal intern, law student, or paralegal furnishing written authorization from the attorney of record is authorized. In addition, suitable authorization for access to the claimant's records must be provided in

order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. The written consent must include the name of the veteran, or the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable VA file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable VA records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. The signed consent must be submitted to the agency of original jurisdiction and maintained in the claimant's file. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings before a Member or Members of the Board at VA field facilities, the consent must be presented to the presiding Member of the hearing.

(4) Unless revoked by the claimant, consent provided under paragraph (c)(2) or paragraph (c)(3) of this section shall remain effective in the event the claimant's original attorney is replaced as attorney of record by another member of the same law firm or an attorney employed by the same legal services office.

NOTE TO §14.629: A legal intern, law student, paralegal, or veterans service organization support-staff person, working under the supervision of an individual designated under §14.631(a) as the claimant's representative, attorney, or agent, may qualify for read-only access to pertinent Veterans Benefits Administration automated claims records as

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described in §§ 1.600 through 1.603 in part 1 of this chapter.

(Authority: 38 U.S.C. 501(a), 5904)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0018 and 2900-0605)

[53 FR 52421, Dec. 28, 1988, as amended at 55 FR 38057, Sept. 17, 1990; 68 FR 8545, Feb. 24, 2003; 71 FR 28586, May 17, 2006; 72 FR 58012, Oct. 12, 2007; 73 FR 29871, May 22, 2008; 73 FR 29871, May 22, 2008]

§ 14.630 Authorization for a particular claim.

(a) Any person may be authorized to prepare, present, and prosecute one claim. A power of attorney executed on VA Form 21-22a, "Appointment of Attorney or Agent as Claimant's Representative," and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the agency of original jurisdiction where the claim is presented. The power of attorney identifies to VA the claimant's appointment of representation and authorizes VA's disclosure of information to the person representing the claimant.

(b) Representation may be provided by an individual pursuant to this section one time only. An exception to this limitation may be granted by the General Counsel in unusual circumstances. Among the factors which may be considered in determining whether an exception will be granted are:

(1) The number of accredited representatives, agents, and attorneys operating in the claimant's geographic region;

(2) Whether the claimant has unsuccessfully sought representation from other sources;

(3) The nature and status of the claim; and

(4) Whether there exists unique circumstances which would render alternative representation inadequate.

(c) Persons providing representation under this section must comply with the laws administered by VA and with the regulations governing practice before VA including the rules of conduct in § 14.632 of this part.

(d) Persons providing representation under this section are subject to suspension and or exclusion from representation of claimants before VA on the same grounds as apply to representatives, agents, and attorneys in § 14.633 of this part.

(Authority: 38 U.S.C. 501(a), 5903)

[68 FR 8546, Feb. 24, 2003, as amended at 73 FR 29872, May 22, 2008]

§ 14.631 Powers of attorney; disclosure of claimant information.

(a) A power of attorney, executed on either VA Form 21-22, "Appointment of Veterans Service Organization as Claimant's Representative," or VA Form 21-22a, "Appointment of Attorney or Agent as Claimant's Representative," is required to represent a claimant before VA and to authorize VA's disclosure of information to any person or organization representing a claimant before the Department. Without the signature of a person providing representation for a particular claim under § 14.630 of this part or an accredited veterans service organization representative, agent, or attorney, the appointment is invalid, and the person appointed to provide representation is under no obligation to do so. The power of attorney shall meet the following requirements:

(1) Contain signature by:

(i) The claimant, or

(ii) The claimant's guardian, or

(iii) In the case of an incompetent, minor, or otherwise incapacitated person without a guardian, the following in the order named—spouse, parent, other relative or friend (if interests are not adverse), or the director of the hospital in which the claimant is maintained; and

(iv) An individual providing representation on a particular claim under § 14.630 of this part or an accredited veterans service organization representative, agent, or attorney; and

(2) Shall be presented to the appropriate VA office for filing in the veteran's claims folder.

(b) VA may, for any purpose, treat a power of attorney naming as a claimant's representative an organization recognized under § 14.628, a particular

office of such an organization, or an individual representative of such an organization as an appointment of the entire organization as the claimant's representative, unless the claimant specifically indicates in the power of attorney a desire to appoint only the individual representative. Such specific indication must be made in the space on the power-of-attorney form for designation of the representative and must use the word "only" with reference to the individual representative.

(c) An organization, individual providing representation on a particular claim under §14.630, representative, agent, or attorney named in a power of attorney executed pursuant to paragraph (a) of this section may withdraw from representation provided before a VA agency of original jurisdiction if such withdrawal would not adversely impact the claimant's interests. This section is applicable until an agency of original jurisdiction certifies an appeal to the Board of Veterans' Appeals after which time 38 CFR 20.608 governs withdrawal from representation before the Board. Withdrawal is also permissible if a claimant persists in a course of action that the organization or individual providing representation reasonably believes is fraudulent or criminal and is furthered through the representation of the organization or individual; the claimant fails to uphold an obligation to the organization or individual providing representation regarding the services of the organization or individual; or other good cause for withdrawal exists. An organization or individual providing representation withdraws from representation by notifying the claimant, the VA organization in possession of the claims file, and the agency of original jurisdiction in writing prior to taking any action to withdraw and takes steps necessary to protect the claimant's interests including, but not limited to, giving advance notice to the claimant, allowing time for appointment of alternative representation, and returning any documents provided by VA in the course of the representation to the agency of original jurisdiction or pursuant to the claimant's instructions, to the organization or individual substituted as the representative, agent, or attorney of

record. Upon withdrawing from representation, all property of the claimant must be returned to the claimant. If the claimant is unavailable, all documents provided by VA for purposes of representation must be returned to the VA organization in possession of the claims file. Any other property of the claimant must be maintained by the organization or individual according to applicable law.

(d) Questions concerning the validity or effect of powers of attorney shall be referred to the Regional Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(e)(1) Only one organization, representative, agent, or attorney will be recognized at one time in the prosecution of a particular claim. Except as provided in §14.629(c) and paragraph (f)(2) of this section, all transactions concerning the claim will be conducted exclusively with the recognized organization, representative, agent, or attorney of record until notice of a change, if any, is received by the appropriate office of VA.

(2) An organization named in a power of attorney executed in accordance with paragraph (a) of this section may employ an attorney to represent a claimant in a particular claim. Unless the attorney is an accredited representative of the organization, the written consent of the claimant shall be required.

(f)(1) A power of attorney may be revoked at any time, and an agent or attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney executed by the claimant and the organization or individual providing representation shall constitute a revocation of an existing power of attorney.

(2) If an agent or attorney limits the scope of his or her representation regarding a particular claim by so indicating on VA Form 21-22a, or a claimant authorizes a person to provide representation in a particular claim under §14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency

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of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

(Authority: 38 U.S.C. 501(a), 5902, 5903, 5904)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0321)

[43 FR 46535-46537, Oct. 10, 1978, as amended at 53 FR 52421, Dec. 28, 1988; 68 FR 8546, Feb. 24, 2003; 73 FR 29873, May 22, 2008]

§ 14.632 Standards of conduct for persons providing representation before the Department

(a)(1) All persons acting on behalf of a claimant shall faithfully execute their duties as individuals providing representation on a particular claim under § 14.630, representatives, agents, or attorneys.

(2) All individuals providing representation are required to be truthful in their dealings with claimants and VA.

(b) An individual providing representation on a particular claim under § 14.630, representative, agent, or attorney shall:

(1) Provide claimants with competent representation before VA. Competent representation requires the knowledge, skill, thoroughness, and preparation necessary for the representation. This includes understanding the issues of fact and law relevant to the claim as well as the applicable provisions of title 38, United States Code, and title 38, Code of Federal Regulations;

(2) Act with reasonable diligence and promptness in representing claimants. This includes responding promptly to VA requests for information or assisting a claimant in responding promptly to VA requests for information.

(c) An individual providing representation on a particular claim under § 14.630, representative, agent, or attorney shall not:

(1) Violate the standards of conduct as described in this section;

(2) Circumvent a rule of conduct through the actions of another;

(3) Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty;

(4) Violate any of the provisions of title 38, United States Code, or title 38, Code of Federal Regulations;

(5) Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation;

(6) Solicit, receive, or enter into agreements for gifts related to representation provided before an agency of original jurisdiction has issued a decision on a claim or claims and a Notice of Disagreement has been filed with respect to that decision;

(7) Delay, without good cause, the processing of a claim at any stage of the administrative process;

(8) Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA;

(9) Engage in, or counsel or advise a claimant to engage in acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA;

(10) Disclose, without the claimant's authorization, any information provided by VA for purposes of representation; or

(11) Engage in any other unlawful or unethical conduct.

(d) In addition to complying with standards of conduct for practice before VA in paragraphs (a) through (c) of this section, an attorney shall not, in providing representation to a claimant before VA, engage in behavior or activities prohibited by the rules of professional conduct of any jurisdiction in which the attorney is licensed to practice law.

(Authority: 38 U.S.C. 501(a), 5902, 5904)

[73 FR 29873, May 22, 2008]

§ 14.633 Termination of accreditation or authority to provide representation under § 14.630.

(a) Accreditation or authority to provide representation on a particular claim under § 14.630 may be suspended or canceled at the request of an organization, individual providing representation under § 14.630, representative, agent, or attorney. When an organization requests suspension or cancellation of the accreditation of a representative due to misconduct or lack of

competence on the part of the representative or because the representative resigned to avoid suspension or cancellation of accreditation for misconduct or lack of competence, the organization shall inform VA of the reason for the request for suspension or cancellation and the facts and circumstances surrounding any incident that led to the request.

(b) Accreditation shall be canceled at such time as a determination is made by the General Counsel that any requirement of § 14.629 is no longer met by a representative, agent, or attorney.

(c) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds, by clear and convincing evidence, one or more of the following:

(1) Violation of or refusal to comply with the laws administered by VA or with the regulations governing practice before VA including the standards of conduct in § 14.632;

(2) Knowingly presenting or prosecuting a fraudulent claim against the United States, or knowingly providing false information to the United States;

(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting, concerning a claim;

(4) Knowingly presenting to VA a frivolous claim, issue, or argument. A claim, issue, or argument is frivolous if the individual providing representation under § 14.630, representative, agent, or attorney is unable to make a good faith argument on the merits of the position taken or to support the position taken by a good faith argument for an extension, modification, or reversal of existing law;

(5) Suspension or disbarment by any court, bar, or Federal or State agency to which such individual providing representation under § 14.630, representative, agent, or attorney was previously admitted to practice, or disqualification from participating in or appearing before any court, bar, or Federal or State agency and lack of subsequent reinstatement;

(6) Charging excessive or unreasonable fees for representation as determined by VA, the Court of Appeals for Veterans Claims, or the United States

Court of Appeals for the Federal Circuit; or

(7) Any other unlawful or unethical practice adversely affecting an individual's fitness for practice before VA.

(d) Accreditation or authority to provide representation on a particular claim shall be canceled when the General Counsel finds that the performance of an individual providing representation under § 14.630, representative, agent, or attorney before VA demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran's benefits. A determination that the performance of an individual providing representation under § 14.630, representative, agent, or attorney before VA demonstrates a lack of the degree of competence required to represent claimants before VA will be based upon consideration of the following factors:

(1) The relative complexity and specialized nature of the matter;

(2) The individual's general experience;

(3) The individual's training and experience; and

(4) The preparation and study the individual is able to give veterans benefits matters and whether it is feasible to refer such matters to, or associate or consult with, an individual of established competence in the field of practice.

(e) As to cancellation of accreditation under paragraphs (c) or (d) of this section, upon receipt of credible written information from any source indicating improper conduct, or incompetence, the Assistant General Counsel of jurisdiction shall inform the subject of the allegations about the specific law, regulation, or policy alleged to have been violated or the nature of the alleged incompetence and the source of the complaint, and shall provide the subject with the opportunity to respond. If the matter involves an accredited representative of a recognized organization, the notice shall include contact with the representative's organization. When appropriate, including situations where no harm results to the claimant or VA, the Assistant General Counsel will provide the subject with an opportunity to correct the offending

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behavior before deciding whether to proceed with a formal inquiry. If the subject refuses to comply and the matter remains unresolved, or the behavior subsequently results in harm to a claimant or VA, the Assistant General Counsel shall immediately initiate a formal inquiry into the matter.

(1) If the result of the inquiry does not justify further action, the Assistant General Counsel will close the inquiry and maintain the record for 3 years.

(2) If the result of the inquiry justifies further action, the Assistant General Counsel shall:

(i) Inform the General Counsel of the result of the inquiry and notify the individual providing representation under § 14.630, representative, agent or attorney of an intent to cancel accreditation or authority to provide representation on a particular claim. The notice will be sent to individuals providing representation on a particular claim by certified or registered mail to the individual's last known address of record as indicated on the VA Form 21-22a on file with the agency of original jurisdiction. The notice will be sent to accredited individuals by certified or registered mail to the individual's last known address of record as indicated in VA's accreditation records. The notice will state the reason(s) for the cancellation proceeding and advise the individual to file an answer, in oath or affidavit form or the form specified for unsworn declarations under penalty of perjury in 28 U.S.C. 1746, within 30 days from the date the notice was mailed, responding to the stated reasons for cancellation and explaining why he or she should not be suspended or excluded from practice before VA. The notice will also advise the individual of the right to submit additional evidence and the right to request a hearing on the matter. Requests for hearings must be made in the answer. If the individual does not file an answer with the Office of the General Counsel within 30 days of the date that the Assistant General Counsel mailed the notice, the Assistant General Counsel shall close the record and forward it with a recommendation to the General Counsel for a final decision.

(ii) In the event that a hearing is not requested, the Assistant General Counsel shall close the record and forward it with a recommendation to the General Counsel for a final decision.

(iii) The Assistant General Counsel may extend the time to file an answer or request a hearing for a reasonable period upon a showing of sufficient cause.

(iv) For purposes of computing time for responses to notices of intent to cancel accreditation, *days* means calendar days. In computing the time for filing this response, the date on which the notice was mailed by the Assistant General Counsel shall be excluded. A response postmarked prior to the expiration of the 30th day shall be accepted as timely filed. If the 30th day falls on a weekend or legal holiday, the first business day thereafter shall be included in the computation. As used in this section, *legal holiday* means New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the State in which the individual resides.

(f) If a hearing is requested, it will be held at the VA Regional Office nearest the individual's principal place of business. If the individual's principal place of business is Washington, DC, the hearing will be held at the VA Central Office or other VA facility in Washington, DC. For hearings conducted at either location, the Assistant General Counsel or his or her designee shall present the evidence. The hearing officer shall not report, directly or indirectly to, or be employed by the General Counsel or the head of the VA agency of original jurisdiction before which the individual provided representation. The hearing officer shall provide notice of the hearing to the individual providing representation under § 14.630, representative, agent, or attorney by certified or registered mail at least 21 days before the date of the hearing. Hearings shall not be scheduled before the completion of the 30-day period for filing an answer to the

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notice of intent to cancel accreditation. The hearing officer will have authority to administer oaths. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the individual requesting the hearing, an appropriate VA official designated in §2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The evidentiary record shall be closed 10 days after the completion of the hearing. The hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the Assistant General Counsel within 30 days of closing the record. The Assistant General Counsel shall immediately forward the record and the hearing officer's recommendation to the General Counsel for a final decision.

(g) The General Counsel may suspend the accreditation of a representative, agent, or attorney, under paragraphs (b), (c), or (d) of this section, for a definite period or until the conditions for reinstatement specified by the General Counsel are satisfied. The General Counsel shall reinstate an individual's accreditation at the end of the suspension period or upon verification that the individual has satisfied the conditions for reinstatement.

(h) The decision of the General Counsel is a final adjudicative determination of an agency of original jurisdiction and may be appealed to the Board of Veterans' Appeals. The effective date for cancellation of accreditation or authority to provide representation on a particular claim shall be the date upon which the General Counsel's final decision is rendered. Notwithstanding provisions in this section for closing the record at the end of the 30-day period for filing an answer or 10 days after a hearing, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under

38 CFR Ch. I (7–1–11 Edition)

38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.

(i) In cases where the accreditation of an agent or attorney is cancelled, the Office of the General Counsel may notify all agencies, courts, and bars to which the agent or attorney is admitted to practice.

(Authority: 38 U.S.C. 501, 5902, 5904)

(The Office of Management and Budget has approved the information collections requirements in this section control number 2900–0018)

[53 FR 52422, Dec. 28, 1988, as amended at 72 FR 58012, Oct. 12, 2007; 73 FR 29874, May 22, 2008]

§ 14.634 Banks or trust companies acting as guardians.

Banks or trust companies, corporate entities, acting as guardians for claimants, may be represented before adjudicating agencies as authorized representatives of claimants by an officer or employee, including a regularly employed attorney, if the employee or attorney represents the corporation in its fiduciary capacity.

(Authority: 38 U.S.C. 5903, 5904)

[43 FR 46535–46537, Oct. 10, 1978. Redesignated and amended at 57 FR 4104, Feb. 3, 1992; 68 FR 8547, Feb. 24, 2003]

§ 14.635 Office space and facilities.

The Secretary may furnish office space and facilities, if available, in buildings owned or occupied by the Department of Veterans Affairs, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting claimants in the preparation, presentation, and prosecution of claims for Department of Veterans Affairs benefits.

(a) Request for office space should be made by an appropriate official of the organization to the Director of the Department of Veterans Affairs facility in which space is desired and should set forth:

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(1) The number of full-time paid representatives who will be permanently assigned to the office;

(2) The number of secretarial or other support staff who will be assigned to the office;

(3) The number of claimants for whom the organization holds powers of attorney whose claims are within the jurisdiction of the facility or who reside in the area served by the facility, the number of such claimants whose claims are pending, and the number of claims prosecuted during the previous three years; and

(4) Any other information the organization deems relevant to the allocation of office space.

(b) When in the judgment of the Director office space and facilities previously granted could be better used by the Department of Veterans Affairs, or would receive more effective use or serve more claimants if allocated to another recognized national organization, the Director may withdraw such space or reassign such space to another organization. In the case of a facility under the control of the Veterans Benefits Administration or the Veterans Health Administration, the final decision on such matters will be made by the Under Secretary for Benefits or the Under Secretary for Health, respectively.

(Authority: 38 U.S.C. 501(a), 5902)

[53 FR 52423, Dec. 28, 1988. Redesignated and amended at 57 FR 4104, Feb. 3, 1992; 68 FR 8547, Feb. 24, 2003]

§ 14.636 Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representa-

tion. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized under § 14.630 of this part are not permitted to receive fees. An agent or attorney who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as an agent or attorney in accordance with § 14.631 of this part in his or her individual capacity as an accredited agent or attorney.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (c)(2) and in paragraph (d) of this section, agents and attorneys may charge claimants or appellants for representation provided: after an agency of original jurisdiction has issued a decision on a claim or claims, including any claim to reopen under 38 CFR 3.156 or for an increase in rate of a benefit; a Notice of Disagreement has been filed with respect to that decision on or after June 20, 2007; and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(1) Agents and attorneys may charge fees for representation provided with respect to a request for revision of a decision of an agency of original jurisdiction under 38 U.S.C. 5109A or the Board of Veterans' Appeals under 38 U.S.C. 7111 based on clear and unmistakable error if a Notice of Disagreement was filed with respect to the challenged decision on or after June 20, 2007, and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(2) In cases in which a Notice of Disagreement was filed on or before June 19, 2007, agents and attorneys may charge fees only for services provided after both of the following conditions have been met:

(i) A final decision was promulgated by the Board with respect to the issue, or issues, involved in the appeal; and

(ii) The agent or attorney was retained not later than 1 year following the date that the decision by the Board was promulgated. (This condition will

be considered to have been met with respect to all successor agents or attorneys acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(3) Except as noted in paragraph (i) of this section and § 14.637(d), the agency of original jurisdiction that issued the decision identified in a Notice of Disagreement shall determine whether an agent or attorney is eligible for fees under this section. The agency of original jurisdiction's eligibility determination is a final adjudicative action and may be appealed to the Board.

(d) *Exceptions*—(1) *Chapter 37 loans*. With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) *Payment of fee by disinterested third party*. (i) An agent or attorney may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. An organization, governmental entity, or other third party is considered disinterested only if the entity or individual does not stand to benefit financially from the successful outcome of the claim. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or

agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: “I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid.”

(e) *Fees permitted*. Fees permitted for services of an agent or attorney admitted to practice before VA must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

- (1) The extent and type of services the representative performed;
- (2) The complexity of the case;
- (3) The level of skill and competence required of the representative in giving the services;
- (4) The amount of time the representative spent on the case;
- (5) The results the representative achieved, including the amount of any benefits recovered;
- (6) The level of review to which the claim was taken and the level of the review at which the representative was retained;
- (7) Rates charged by other representatives for similar services; and
- (8) Whether, and to what extent, the payment of fees is contingent upon the results achieved.

(f) *Presumptions*. Fees which do not exceed 20 percent of any past-due benefits awarded as defined in paragraph (h)(3) of this section shall be presumed to be reasonable. Fees which exceed 33⅓ percent of any past-due benefits awarded shall be presumed to be unreasonable. These presumptions may be rebutted through an examination of the factors in paragraph (e) of this section establishing that there is clear and convincing evidence that a fee which does not exceed 20 percent of any past-due benefits awarded is not reasonable or that a fee which exceeds 33⅓ percent is reasonable in a specific circumstance.

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(g) *Fee agreements.* All agreements for the payment of fees for services of agents and attorneys (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the agent or attorney.

(1) To be valid, a fee agreement must include the following:

- (i) The name of the veteran,
- (ii) The name of the claimant or appellant if other than the veteran,
- (iii) The name of any disinterested third-party payer (see paragraph (d)(2) of this section) and the relationship between the third-party payer and the veteran, claimant, or appellant,
- (iv) The applicable VA file number, and
- (v) The specific terms under which the amount to be paid for the services of the attorney or agent will be determined.

(2) Fee agreements must also clearly specify if VA is to pay the agent or attorney directly out of past due benefits. A direct-pay fee agreement is a fee agreement between the claimant or appellant and an agent or attorney providing for payment of fees out of past-due benefits awarded directly to an agent or attorney. A fee agreement that does not clearly specify that VA is to pay the agent or attorney out of past-due benefits or that specifies a fee greater than 20 percent of past-due benefits awarded by VA shall be considered to be an agreement in which the agent or attorney is responsible for collecting any fees for representation from the claimant without assistance from VA.

(3) A copy of the agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. Only fee agreements and documents related to review of fees under paragraph (i) of this section and expenses under §14.637 may be filed with the Office of the General Counsel. All documents relating the adjudication of a claim for VA benefits, including any correspondence, evidence, or argument, must be filed with the agency of original jurisdiction,

Board of Veterans' Appeals, or other VA office as appropriate.

(h) *Payment of fees by Department of Veterans Affairs directly to an agent or attorney from past-due benefits.* (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an agent or attorney may enter into a fee agreement providing that payment for the services of the agent or attorney will be made directly to the agent or attorney by VA out of any past-due benefits awarded in any proceeding before VA or the United States Court of Appeals for Veterans Claims. VA will charge and collect an assessment out of the fees paid directly to agents or attorneys from past-due benefits awarded. The amount of such assessment shall be equal to five percent of the amount of the fee required to be paid to the agent or attorney, but in no event shall the assessment exceed \$100. Such an agreement will be honored by VA only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and 38 CFR 3.750))

(2) For purposes of this paragraph (h), a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph (h), "past-due benefits" means a non-recurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by a VA agency of original jurisdiction or the Board of Veterans' Appeals or the lump sum

payment that represents the total amount of recurring cash payments that accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the agent or attorney represents the claimant or appellant in that phase of the claim, the agent or attorney will be paid a supplemental payment based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the agent or attorney, the agent's or attorney's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) In addition to filing a copy of the fee agreement with the Office of the General Counsel as required by paragraph (g) of this section, the agent or attorney must notify the agency of

original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due and provide that agency with a copy of the fee agreement.

(i) *Motion for review of fee agreement.* Before the expiration of 120 days from the date of the final VA action, the Office of the General Counsel may review a fee agreement between a claimant or appellant and an agent or attorney upon its own motion or upon the motion of the claimant or appellant. The Office of the General Counsel may order a reduction in the fee called for in the agreement if it finds by a preponderance of the evidence, or by clear and convincing evidence in the case of a fee presumed reasonable under paragraph (f) of this section, that the fee is unreasonable. The Office of the General Counsel may approve a fee presumed unreasonable under paragraph (f) of this section if it finds by clear and convincing evidence that the fee is reasonable. The Office of the General Counsel's review of the agreement under this paragraph will address the issues of eligibility under paragraph (c) of this section and reasonableness under paragraph (e) of this section. The Office of the General Counsel will limit its review and decision under this paragraph to the issue of reasonableness if another agency of original jurisdiction has reviewed the agreement and made an eligibility determination under paragraph (c) of this section. Motions for review of fee agreements must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is unreasonable and must be accompanied by all evidence the moving party desires to submit.

(1) A claimant's or appellant's motion for review of a fee agreement must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any

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relevant evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Assistant General Counsel shall initiate the Office of the General Counsel's review of a fee agreement on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant.

(3) The Office of the General Counsel shall close the record in proceedings to review fee agreements 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Assistant General Counsel may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. The Assistant General Counsel shall forward the record and a recommendation to the General Counsel for a final decision. Unless either party files a Notice of Disagreement with the Office of the General Counsel, the agent or attorney must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result

in proceedings under §14.633 of this chapter to terminate the agent's or attorney's accreditation to practice before VA.

(k) Notwithstanding provisions in this section for closing the record at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.

(Authority: 38 U.S.C. 5902, 5904, 5905)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0085)

[73 FR 29875, May 22, 2008]

§ 14.637 Payment of the expenses of agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any agent or attorney may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits pending before VA. Whether such an agent or attorney will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the agent or attorney and the claimant or appellant in the fee agreement filed with the Office of the General Counsel under §14.636 of this part. Expenses are not payable directly to the agent or attorney by VA out of benefits determined to be due to a claimant or appellant.

(c) *Nature of expenses subject to reimbursement.* “Expenses” include non-recurring expenses incurred directly in the prosecution of a claim for benefits on behalf of a claimant or appellant. Examples for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, and the cost of obtaining the services of an expert witness or an expert opinion. “Expenses” do not include normal overhead costs of the agent or attorney such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, and the cost of office supplies.

(d) *Expense charges permitted; motion for review of expenses.* Reimbursement for the expenses of an agent or attorney may be obtained only if the expenses are reasonable. The Office of the General Counsel may review the expenses charged by an agent or attorney upon its own motion or the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. The Office of the General Counsel’s review of expenses under this paragraph will address the issues of eligibility under § 14.636(c) and reasonableness. The Office of the General Counsel will limit its review and decision under this paragraph to the issue of reasonableness if another agency of original jurisdiction has reviewed the fee agreement between the claimant and the agent or attorney and determined that the agent or attorney is eligible for reimbursement of expenses. Motions for review of expenses must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable and must be accompanied by all evidence the claimant or appellant desires to submit. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the

potential extent of benefits recoverable, and whether travel expenses are in keeping with expenses normally incurred by other representatives.

(1) A claimant’s or appellant’s motion for review of expenses must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Assistant General Counsel shall initiate the Office of the General Counsel’s review of expenses on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any accompanying evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant.

(3) The Office of the General Counsel shall close the record in proceedings to review expenses 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Assistant General Counsel may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. Unless either party files a Notice of Disagreement with the General Counsel’s decision, the attorney or agent must refund any excess payment to the claimant or appellant not later

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than the expiration of the time within which the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(e) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under §14.633 of this part to terminate the agent's or attorney's accreditation to practice before VA.

(f) Notwithstanding provisions in this section for closing the record at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.

(Authority: 38 U.S.C. 5904)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0085)

[73 FR 29878, May 22, 2008]

PERSONNEL CLAIMS

§ 14.664 Scope of authority and effective date.

Pub. L. 88-558 (78 Stat. 767), approved August 31, 1964, as amended, authorizes the Secretary or the Secretary's designee to settle and pay a claim for not more than \$40,000 made by a civilian officer or employee of the Department of Veterans Affairs for damage to, or loss of personal property incident to such person's service. Authority is delegated by §2.6(e)(5) of this chapter to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group III), and the Deputy Assistant General Counsel, of said staff group and the Regional Counsel and those acting for them to settle and pay such claims on behalf of the Secretary,

and such settlement shall be final and conclusive.

(Authority: 31 U.S.C. 3721(b))

[42 FR 41421, Aug. 17, 1977, as amended at 49 FR 47005, Nov. 30, 1984; 55 FR 48841, Nov. 23, 1990]

§ 14.665 Claims.

(a) The claim must be presented in writing on VA Form 2-4760, Employee's Claim for Reimbursement for Personal Property Damaged or Lost Incident to Employment. It will be submitted to the personnel office where the claim originates within 2 years after it accrues except that if the claim accrues in time of war or in time of armed conflict in which any Armed Force of the United States is engaged or if such war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after that cause ceases to exist. The claim must be executed and certified by the officer or the employee suffering the loss or damage, or in the event of his or her death, by the surviving spouse, children, father or mother or both, or brothers or sisters or both. Claims of survivors shall be settled and paid in the order named. All claims must contain the following:

(1) The date, time, and place the loss or damage occurred and the circumstances surrounding such loss or damage, together with the supporting statements of any witnesses who can verify such facts.

(2) In the event of damage, the date of acquisition, original cost, condition before damage, and at least two estimates of the cost of repair or replacement. In the event of loss, the date of acquisition, the original cost, the condition, and an estimate of the reasonable market value of the article or articles.

(3) A statement as to any claims or potential claim he or she may have for indemnification of the loss or damage against other than the United States and whether he or she will assign such to the United States and cooperate in its prosecution. Where such claim or potential claim is against a carrier or insurer, evidence that a timely claim

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has been properly made. Where a recovery from the carrier or his or her insurer has been obtained or offered, such information shall be included.

(4) In cases involving damage or destruction of personal property by patients or domiciliary members, a statement as to whether a claim was filed pursuant to 38 U.S.C. 703(a)(5) and whether such claim has been finally denied.

(b) The Personnel Officer receiving the claim will forward same to the person designated to investigate accidents at the station pursuant to § 14.605 within 5 days after receipt.

(c) The employee designated pursuant to § 14.605 will ascertain if such claim is complete in all respects and conduct such investigation as is necessary to establish all facts required to properly evaluate the claim both as to merit and the reasonable amount payable for the loss or damage. Where it is indicated that the claimant may have a potential claim against other than the United States, the employee designated will secure a suitable assignment of all right and title to such claim, to the extent the United States makes reimbursement, and the agreement of the claimant to furnish such evidence as may be necessary to pursue such claim. If the potential claim is against a carrier or insurer, the employee designated will ascertain that the claimant has filed a timely proper claim and procure evidence thereof. The employee designated will also include information concerning any offer of settlement the carrier may have made. The completed investigation, original claim and supporting evidence will be forwarded to the appropriate Regional Counsel.

[38 FR 5475, Mar. 1, 1973, as amended at 42 FR 41421, Aug. 17, 1977]

§ 14.666 Regional Counsel responsibility.

(a) The Regional Counsel having jurisdiction will conduct such additional investigation as is deemed necessary to establish all facts required. If the claimant has a potential claim for indemnification against other than the United States, the Regional Counsel will ascertain that a suitable assignment, legally enforceable, of all right

and title to such claim, to the extent the United States makes reimbursement, and the agreement of the claimant to furnish such evidence as may be necessary to pursue such claim is of record. If such potential claim is against a carrier or insurer, the Regional Counsel will ascertain that claimant has filed a timely proper claim against the carrier or insurer and review same for legal sufficiency.

(b) The Regional Counsel having jurisdiction over a claim will not authorize payment thereon unless the requirement of §§ 14.664 through 14.667 are met. In determining the equitable value of a claim, the depreciation schedule issued by the General Counsel will be used as a guide.

[42 FR 41422, Aug. 17, 1977]

§ 14.667 Claims payable.

(a) No claim shall be paid unless timely filed in proper form as provided in § 14.665 and the preponderance of the evidence establishes that the loss or damage:

(1) Actually occurred and the amount claimed is reasonable,

(2) Was incident to the employee's service and his or her possession of the property was reasonable, useful, or proper under the circumstances,

(3) Did not occur at quarters occupied within the 50 States or the District of Columbia that were not assigned to the claimant or otherwise provided in kind by the United States.

(4) Was not caused wholly or partly by the negligent act of claimant, the claimant's agent, or employee, and that the claimant has no right to indemnification for the loss or damage from other than the United States, except to the extent that the claimant assigns such right to the United States and agrees to furnish evidence required to enable the United States to enforce such right. In the event there is a right to recovery for the loss or damage from a carrier or insurer the claimant will be required to file a timely claim for such recovery before consideration of the claim against the United States.

(b) No claim for the cost of repair or replacement of personal property of employees damaged or destroyed by patients or domiciliary members while

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such employees are engaged in the performance of official duties shall be entertained under §§ 14.664 through 14.667, unless claim filed pursuant to 38 U.S.C. 703(a)(5) (§ 17.78 of this chapter) has been finally denied for the reason that such claim did not meet the criteria established by that law.

[38 FR 5475, Mar. 1, 1973, as amended at 42 FR 41422, Aug. 17, 1977]

§ 14.668 Disposition of claims.

(a) *Disallowed claims.* Claimants will be promptly notified of the disallowance of a claim and the reasons therefor.

(b) *Allowed claims*—(1) *Reimbursement in kind.* Where a claim is allowed and it is determined to be to the advantage of the Government, reimbursement will be made in kind. The official authorizing settlement will request the Director, Supply Service, Veterans Health Services and Research Administration, to procure the necessary article or articles and deliver same to the claimant.

(2) *Reimbursement by check.* The official authorizing settlement will forward allowed claims, other than those requiring reimbursement in kind, to the Finance activity at the Department of Veterans Affairs installation where the claim arose. That activity will audit the claim, which if found proper for payment, will be scheduled on SF 1166, Voucher and Schedule of Payments, and forwarded to the appropriate Regional Disbursing Office for payment.

[38 FR 5475, Mar. 1, 1973, as amended at 42 FR 41422, Aug. 17, 1977]

§ 14.669 Fees of agents or attorneys; penalty.

The Military Personnel and Civilian Employees' Claims Act of 1964 (Pub. L. 88-558; 78 Stat. 767) was amended by Pub. L. 89-185 (79 Stat. 789), on September 15, 1965, by adding a new section which provided that no more than 10 percent of the amount paid in settlement of each individual claim submitted and settled under the authority of the Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. Any person

violating the provisions of this Act is deemed to be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

[38 FR 5475, Mar. 1, 1973]

COMMITMENTS—FIDUCIARIES

SOURCE: 42 FR 41422, Aug. 17, 1977, unless otherwise noted.

§ 14.700 Court cost and expenses; commitment, restoration, fiduciary appointments.

It is the responsibility of the Regional Counsel to assure the protection of the veteran, his or her beneficiaries, and their estates in State court proceedings involving commitment and restoration, and the appointment of fiduciaries. To this end certain expenses such as court costs, publication fees, recording fees, transportation expenses and fees for medical testimony may be authorized by the Regional Counsel. Payment of these costs will be borne by the administration concerned. However, every effort will be made by the Regional Counsel to avoid having these costs imposed on the Department of Veterans Affairs. The travel and per diem cost of the Regional Counsel personnel will be borne by the Regional Counsel.

§ 14.701 Commitment and restoration proceedings.

(a) *State institutions.* Regional Counsels are authorized to cooperate with State courts, including the production of required records in the commitment of veterans to State hospitals or in their restoration to full civil rights.

(b) *Department of Veterans Affairs institutions*—(1) *Assistance to courts in commitment proceedings.* The Regional Counsel will render assistance to the courts in cases involving the commitment of mentally ill veterans to the Department of Veterans Affairs. To this end, the Regional Counsel may:

(i) Produce Department of Veterans Affairs records.

(ii) Appear in court and present material facts.

(iii) When authorized to institute commitment proceedings under paragraph (b)(2) of this section, prepare and present all necessary legal papers, and

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arrange and authorize transportation costs of veterans and attendants at Department of Veterans Affairs expense (§§ 14.703 and 14.704).

(2) *Commitment proceedings.* If a mentally ill veteran will accept hospitalization voluntarily, no action will be initiated by any Department of Veterans Affairs employee to commit such veteran. If the veteran will not accept hospitalization, or after being voluntarily hospitalized by the Department of Veterans Affairs demands his or her release, and hospitalization is necessary for the veteran's safety or the safety of others, the Regional Counsel (if a relative of the veteran or other interested person has not done so) may institute proceedings to commit the veteran to the Department of Veterans Affairs subject to the following conditions:

(i) That the written consent of the veteran's nearest relative has been obtained. If the nearest relative cannot be readily contacted or refuses to consent, coupled with inability or refusal to offer adequate alternative care, the Regional Counsel may initiate the action if the petition is signed by another relative, a civil official or representative of a cooperating agency or other person authorized by State law.

(ii) If timely action cannot be taken under paragraph (b)(2)(i) of this section, the Hospital or Clinic Director, or designee, may sign the petition if permissible under State law, and the Regional Counsel will then take any action necessary to bring the matter before the appropriate court.

(3) *Illegal commitment.* When a hospitalized veteran, previously committed to the Department of Veterans Affairs, demands release and continued hospitalization is necessary for the veteran's safety or the safety of others, and the Regional Counsel determines the commitment to be illegal, immediate action will be taken to obtain a legal commitment.

(4) *Restoration proceedings.* When a veteran has been a committed patient in a Department of Veterans Affairs hospital and is subsequently rated competent by the Department of Veterans Affairs, the Regional Counsel upon request, may institute pro-

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ceedings necessary to restore the veteran to full civil rights.

§ 14.702 Medical testimony in commitment or restoration proceedings.

(a) *Commitment.* When permissible under State law, Department of Veterans Affairs physicians, upon request of the Regional Counsel, will sign interrogatories or certificates of mental illness or insanity and, unless unavailable, as provided in paragraph (c) of this section, will testify in proceedings which the Regional Counsel is authorized to institute under § 14.701 to commit eligible veterans to the Department of Veterans Affairs.

(b) *Restoration.* (1) When permissible under State law, Department of Veterans Affairs physicians, upon the request of the Regional Counsel, will testify in proceedings brought for the purpose of restoring a committed veteran to full civil rights when the veteran is a committed patient in a Department of Veterans Affairs hospital.

(2) The Director of a Department of Veterans Affairs hospital or the Regional Counsel upon discharge of the veteran, may furnish a certificate of sanity or such similar certificate to the proper civil authorities.

(c) *Employment of private physicians.* When testimony of Department of Veterans Affairs physicians is prohibited or is unavailable because of a duty assignment, comparative expense or other valid reason, the Director of the Department of Veterans Affairs hospital, upon recommendation of the Regional Counsel, may employ any qualified physician for preliminary examination of the veteran and for testimony in any commitment or restoration proceeding which the Regional Counsel is authorized to institute under § 14.701, and authorize the payment of a fee not to exceed the prescribed fee, or in the absence thereof, the customary fee charged for the service rendered.

§ 14.703 Costs in commitment or restoration proceedings.

(a) When authorized to institute a proceeding under § 14.701, the Regional Counsel may authorize in advance or thereafter the payment or reimbursement of costs and other expenses for

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which the veteran is legally liable, including publication of notice necessary to accomplish the commitment.

(b) The Regional Counsel also may authorize the payment of necessary costs and expenses for which the veteran is legally liable incident to his or her restoration to full civil rights in any case in which the Regional Counsel is authorized to institute restoration proceedings under § 14.701(b)(4).

§ 14.704 Authorization of transportation necessary for commitment of a veteran beneficiary.

When a mentally ill veteran who should be committed is hospitalized by the Department of Veterans Affairs and under the law of the State wherein the hospital is located, a commitment may not be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the commitment can be accomplished. If the veteran is in a Department of Veterans Affairs hospital, the Hospital Director may authorize travel of the veteran and an attendant or attendants, if necessary, upon request of the Regional Counsel. If the veteran is being maintained in a non-Department of Veterans Affairs hospital, the Director of the facility authorizing and paying for the care may authorize such travel upon request of the Regional Counsel.

§ 14.705 Authority to file petitions for appointment of fiduciaries in State courts.

(a) *Adult beneficiary.* The Regional Counsel is authorized to file or cause to be filed on behalf of a petitioner in a case coming within § 14.706(a) a petition for the appointment of a fiduciary and all necessary legal papers for an adult beneficiary only if it has been determined that alternative methods of payment would not be to the best interests of the beneficiary and when the Regional Counsel has obtained the written consent of:

- (1) The beneficiary's spouse.
- (2) The beneficiary's adult child, parent, adult brother or sister if the beneficiary is unmarried, or consent of the spouse is immaterial because of estrangement or mental incapacity, or refusal to consent coupled with failure

to offer adequate alternative means for providing for the beneficiary's needs.

(3) A civil official or representative of a cooperating agency when none of the relative listed in paragraph (a) (1) and (2) of this section can be located after reasonable inquiry or those located are not mentally competent to consent or refuse without offering adequate alternative means for providing for the needs of the beneficiary.

(b) *Minor beneficiaries.* The Regional Counsel is authorized to file or cause to be filed on behalf of a petitioner in a case coming within § 14.706(a) a petition for the appointment of a fiduciary for a minor. If permissible under the law of the jurisdiction concerned and if it has been determined that protection of the minor's rights under laws administered by the Department of Veterans Affairs requires the appointment, provided: the written consent of the minor's natural or adoptive parent or parents or the person or persons occupying the relationship of "in loco parentis" as defined, by the law of the jurisdiction, in which they reside has been obtained. The Regional Counsel will not institute a court proceeding for the appointment of a fiduciary over the objections of such parent or parents if they are sui juris unless the parent or parents have abandoned the minor or have otherwise refused to meet their parental obligations toward the minor or they have previously been appointed or recognized as the minor's fiduciary and failed to properly execute the duties of their trust. If the minor has no parent or the parent or parents are not sui juris, the Regional Counsel may file the petition without the consent of any relative.

(c) *Court-appointed fiduciaries.* In court-appointed fiduciary cases, the Regional Counsel may appear in the court of appointment or in any court having original, concurrent, or appellate jurisdiction, and make proper presentation relating to the foregoing matters. The Regional Counsel's authority includes by is not limited to:

- (1) Petitioning the court to cite a fiduciary to account;
- (2) Filing exceptions to accountings;
- (3) Requiring fiduciaries to file bonds or make any necessary adjustments;
- (4) Requiring investments;

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(5) Filing petitions to vacate or modify court orders;

(6) Appearing or intervening in any State court as attorney for the Secretary of Veterans Affairs in litigation instituted by the Secretary or otherwise affecting money paid to such fiduciary by the Department of Veterans Affairs;

(7) Incurring necessary court costs and other expenses, including witness fees, appeal bonds, advertising in any newspaper or other publication, preparing briefs or transcripts, purchase of records of trial or other records;

(8) Instituting any other action necessary to secure proper administration of the estate of a Department of Veterans Affairs beneficiary, such as filing petitions for the removal of a fiduciary and appointment of a successor;

(9) Taking appropriate action to recover funds improperly disbursed.

(d) *Appeal.* Unless a trial is de novo, no appeal shall be taken to an appellate court and no costs incurred in connection therewith without the prior approval of the General Counsel and the Under Secretary for Benefits or their designees.

§ 14.706 Legal services in behalf of beneficiaries.

(a) The Regional Counsel may furnish legal services in behalf of minor and incompetent beneficiaries of the Department of Veterans Affairs in fiduciary appointment and estate administration matters involving Department of Veterans Affairs benefits or property derived therefrom when the beneficiary's estate or income is not sufficient to justify the employment of an attorney.

(b) The Regional Counsel may also furnish legal services in hardship situations when restoration from legal disability is a condition of precedent to direct payment of Department of Veterans Affairs benefits.

(c) Where the fiduciary does not in due course institute the necessary action to terminate the trust relationship and the beneficiary requests representation by the Regional Counsel or in any such case where there is in question the proper administration of the estate, the Regional Counsel may file the necessary action and supply legal services. Costs, unless assessed against

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the fiduciary, should be charged to the estate of the beneficiary.

§ 14.707 Authorization of transportation of a veteran beneficiary for appointment of a fiduciary.

When the appointment of a fiduciary is required for an incompetent veteran hospitalized by the Department of Veterans Affairs and, under the law of the State wherein the hospital is located, the appointment cannot be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the appointment can be accomplished. If the veteran is in a Department of Veterans Affairs hospital, the Hospital Director, upon request of the Regional Counsel, may authorize travel of the veteran and an attendant or attendants, if necessary. If the veteran is being maintained in a non-Department of Veterans Affairs hospital, the Director of the facility authorizing and paying for the care may authorize such travel upon request of the Regional Counsel.

§ 14.708 Costs and other expenses incident to appointment of fiduciary.

(a) The Regional Counsel may authorize the payment of costs and other necessary expenses incident to the appointment of an initial or successor fiduciary for a Department of Veterans Affairs beneficiary when:

(1) Authorized to render legal services under § 14.706.

(2) Appointment was caused by the Department of Veterans Affairs and it develops that no benefits are payable and there is no estate from which costs may be paid.

(3) Costs must be advanced when there is no immediate estate from which same may be paid. These costs are to be recovered from benefits payable unless the case falls within paragraph (a)(1) of this section.

(b) Costs and necessary expenses include:

(1) All those chargeable by statute or rule of court and certified by the clerk of court.

(2) Certified copies of court records required by the Department of Veterans Affairs.

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(3) Fees for guardian ad litem when chargeable as court costs and required by State law.

§ 14.709 Surety bonds; court-appointed fiduciary.

(a) It is the policy of the Department of Veterans Affairs to require, where possible under State laws and rules of the court, corporate surety bonds in all court-appointed fiduciary cases where the fiduciary is an individual and the estate is sufficient to justify the expense of procuring a corporate surety bond. Corporate bonds may be required of corporate fiduciaries in accordance with State laws. In cases wherein fiduciaries neglect or refuse to furnish corporate bonds, as requested by the Regional Counsel, the Regional Counsel should take appropriate court action and notify the Veterans Service Center Manager.

(b) When it is not practical or feasible to require a fiduciary to furnish a corporate surety bond, the Regional Counsel is authorized to accept bonds with such number of personal sureties as is permissible under State law, but in no event less than one. To be acceptable for Department of Veterans Affairs purposes, each personal surety must be worth at least the penal sum named in the bond over and above all debts, liabilities and exemptions and qualify in accordance with the requirements of State law. The Regional Counsel will request suitable evidence of financial responsibility whenever there is any question as to the ability of a personal surety to meet any probable liability. When suitable evidence is not furnished as requested, or financial responsibility is found to be insufficient to meet the penal sum of the bond, the Regional Counsel should take appropriate court action and notify the Veterans Service Center Manager.

(c) It is the policy of the Department of Veterans Affairs to require surety bonds in an amount commensurate with value of the personal estate derived from Department of Veterans Affairs benefits plus the anticipated net income from Department of Veterans Affairs benefits received during the ensuing accounting period. In cases where the fiduciaries neglect or refuse to furnish surety bonds in the amount re-

quested by the Regional Counsel, the Regional Counsel should take appropriate court action and notify the Veterans Service Center Manager. When permissible under State law, the Regional Counsel may accept, without objection, a lesser degree of protection approved by the court when it is determined that such action will adequately protect the beneficiary's estate.

[42 FR 41422, Aug. 17, 1977, as amended at 71 FR 28586, May 17, 2006]

TESTIMONY OF DEPARTMENT PERSONNEL AND PRODUCTION OF DEPARTMENT RECORDS IN LEGAL PROCEEDINGS

SOURCE: 59 FR 6566, Feb. 11, 1994, unless otherwise noted.

§ 14.800 Purpose.

Sections 14.800 through 14.810 establish policy, assign responsibilities and prescribe procedures with respect to:

(a) The production or disclosure of official information or records of the Department of Veterans Affairs (VA); and

(b) The testimony of present or former VA personnel relating to any official information acquired by any individual as part of that individual's performance of official duties, or by virtue of that individual's official status, in federal, state or other legal proceedings covered by these regulations.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

§ 14.801 Applicability.

(a) Sections 14.800 through 14.810 apply to:

(1) Contractors and subcontractors which undertake a VA activity or maintain VA records when the contract covering their actions provides that these regulations apply, as well as the personnel of contractors and subcontractors.

(2) All components of the Department, including Canteen Service, the Office of Inspector General, and all staff offices, services and administrations, and their personnel.

(b) Sections 14.800 through 14.810 do not apply to:

(1) Testimony or records provided in accordance with Office of Personnel Management regulations implementing 5 U.S.C. 6322.

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(2)(i) Legal proceedings in which the Department of Veterans Affairs, the Secretary of Veterans Affairs or the United States is a party, is represented or has a direct and substantial interest; or

(ii) Legal proceedings in which an individual or entity is a party for whom the United States is providing representation.

(3) Legal proceedings in which VA personnel are to testify while in leave or off-duty status as to matters which are purely personal and that do not arise out of, or relate in any way to, the personnel's official duties or to the functions and activities of the VA or the United States.

(4) Official comments on matters in legal proceedings, where appropriate.

(5) Disclosures, in the absence of a request or demand, of information or records by VA components, particularly the Office of Inspector General, to federal, state, local and foreign law enforcement or regulatory agencies.

(6) Congressional demands or requests for testimony or documents.

(7) Requests for, and release of, records under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

(8) Disclosures in child support and alimony proceedings under the authority of 42 U.S.C. 659 and regulations promulgated by the Office of Personnel Management implementing that section.

(9) Legal proceedings before or involving the VA concerning a claim or dispute as to the rights of a beneficiary or obligations or liabilities of the United States under any law or program administered by the Department of Veterans Affairs.

(10) Requests by a veteran or that veteran's representative for access to the veteran's records for use in an administrative or judicial claim for benefits administered by the Department of Veterans Affairs.

(11) Foreign legal proceedings covered by Department of State procedures governing the production of records or witnesses in response to requests or demands in connection with foreign legal proceedings.

(c) Sections 14.800 through 14.810 are not intended to, and do not:

(1) Waive the sovereign immunity of the United States;

(2) Infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases;

(3) Remove the need for the Department to comply with any applicable legal confidentiality provisions, such as the Privacy Act, before having the legal authority to make any disclosure or providing any testimony under these regulations. (Sections 14.800 through 14.810 do not give VA disclosure authority under applicable confidentiality statutes; absent disclosure authority granted by those statutes, information and records subject to those laws may not be disclosed, or testimony given as to them under the procedures established in these regulations); or

(4) Preclude treating any written request for agency records that is not in the nature of a request or demand related to legal proceedings as a request under the Freedom of Information or Privacy Acts.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

§ 14.802 Definitions.

(a) *Demand*. Order, subpoena, or other demand of a court of competent jurisdiction, or other specific authority or under color of law, for the production, disclosure, or release of VA information or records or for the appearance and testimony of VA personnel as witnesses.

(b) *Request*. Any informal request, by whatever method, from a party, a party's attorney, or any person acting on behalf of a party, for the production of VA records or information or for the testimony of VA personnel as witnesses, which has not been ordered by a court of competent jurisdiction or other specific authority or under color of law.

(c) *VA personnel*. All present and former officers and employees of the VA and any other individuals who are or have been appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Veterans Affairs or another official of the VA, including nonappropriated fund activity employees, and other individuals hired

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through contractual agreements by or on behalf of the VA, or performing services under such agreements for VA, such as consultants, contractors, subcontractors, their employees and personnel. This phrase also includes individuals who served or are serving on any advisory committee or in any advisory capacity, whether formal or informal.

(d) *Legal proceedings.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other tribunals, foreign or domestic that are not specified in § 14.801(b). This phrase includes depositions and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving legal proceedings not specified in § 14.801(b).

(e) *Official VA information.* All information of any kind, however stored, that is in the custody and control of VA or was acquired by VA personnel as part of their official duties or because of their official status.

(f) *Testimony.* Testimony in any form, including personal appearances in court, depositions, recorded interviews, telephonic, televised or videotaped testimony or any response during discovery or similar proceedings, which response would involve more than the production of records.

(g) *VA records.* All documents which are records of the Department of Veterans Affairs for purposes of the Freedom of Information Act, 5 U.S.C. 552, regardless of storage media, including the term “record” as defined in 44 U.S.C. 3301, and implementing regulations.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301)

§ 14.803 Policy.

(a) VA personnel may provide testimony or produce VA records in legal proceedings covered by §§ 14.800 through 14.810 only as authorized in accordance with these regulations. In determining whether to authorize testimony or the production of records, the determining official will consider the effect in this case, as well as in future cases gen-

erally, based on the factors set forth in § 14.804, which testifying or producing records not available for public disclosure will have on the ability of the agency or VA personnel to perform their official duties.

(b) The Department of Veterans Affairs does not seek to deny its employees access to the courts as citizens, or in the employees’ private capacities on off-duty time.

(c) The Department of Veterans Affairs does not seek to deny the Nation’s veterans access to the courts.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.804 Factors to consider.

In deciding whether to authorize the disclosure of VA records or information or the testimony of VA personnel, VA personnel responsible for making the decision should consider the following types of factors:

(a) The need to avoid spending the time and money of the United States for private purposes and to conserve the time of VA personnel for conducting their official duties concerning servicing the Nation’s veteran population;

(b) How the testimony or production of records would assist VA in performing its statutory duties;

(c) Whether the disclosure of the records or presentation of testimony is necessary to prevent the perpetration of fraud or other injustice in the matter in question;

(d) Whether the demand or request is unduly burdensome or otherwise inappropriate under the applicable court or administrative rules;

(e) Whether the testimony or production of records, including release in camera, is appropriate or necessary under the rules of procedure governing the case or matter in which the demand or request arose, or under the relevant substantive law concerning privilege;

(f) Whether the testimony or production of records would violate a statute, executive order, regulation or directive. (Where the production of a record or testimony as to the content of a record or about information contained in a record would violate a confidentiality statute’s prohibition against

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disclosure, disclosure will not be made. Examples of such statutes are the Privacy Act, 5 U.S.C. 552a, and sections 5701, 5705 and 7332 of title 38, United States Code.);

(g) Whether the testimony or production of records, except when *in camera* and necessary to assert a claim of privilege, would reveal information properly classified pursuant to applicable statutes or Executive Orders;

(h) Whether the testimony would interfere with ongoing law enforcement proceedings, compromise constitutional rights, compromise national security interests, hamper VA or private health care research activities, reveal sensitive patient or beneficiary information, interfere with patient care, disclose trade secrets or similarly confidential commercial or financial information or otherwise be inappropriate under the circumstances.

(i) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government favoring one litigant over another;

(j) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government endorsing or supporting a position advocated by a party to the proceeding;

(k) The need to prevent the public's possible misconstruction of variances between personal opinions of VA personnel and VA or Federal policy.

(l) The need to minimize VA's possible involvement in issues unrelated to its mission;

(m) Whether the demand or request is within the authority of the party making it;

(n) Whether the demand or request is sufficiently specific to be answered;

(o) Other matters or concerns presented for consideration in making the decision.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.805 Contents of a demand or request.

The request or demand for testimony or production of documents shall set forth in, or be accompanied by, an affidavit, or if that is not feasible, in, or accompanied by, a written statement

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by the party seeking the testimony or records or by the party's attorney, a summary of the nature and relevance of the testimony or records sought in the legal proceedings containing sufficient information for the responsible VA official to determine whether VA personnel should be allowed to testify or records should be produced. Where the materials are considered insufficient to make the determination as described in §14.807, the responsible VA official may ask the requester to provide additional information.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.806 Scope of testimony or production.

VA personnel shall not, in response to a request or demand for testimony or production of records in legal proceedings, comment or testify or produce records without the prior written approval of the responsible VA official designated in §14.807(b). VA personnel may only testify concerning or comment upon official VA information, subjects or activities, or produce records, that were specified in writing, submitted to and properly approved by the responsible VA official.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.807 Procedure when demand or request is made.

(a) VA personnel upon whom a demand or request for testimony or the production of records in connection with legal proceedings as defined in §14.802(d) is made shall notify the head of his or her field station, or if in Central Office, the head of the component for which he or she works. The field station or Central Office component shall notify the responsible VA official designated in §14.807(b).

(b) In response to a demand or request for the production of records or the testimony of VA personnel, other than personnel in the Office of the Inspector General (OIG), as witnesses in legal proceedings covered by these regulations, the General Counsel, the Regional Counsel, an attorney in the Office of General Counsel designated by the General Counsel, or an attorney in the Regional Counsel office designated

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by the Regional Counsel is the responsible VA official authorized to determine whether VA personnel may be interviewed, contacted or used as witnesses, including used as expert witnesses, and whether VA records may be produced; and what, if any, conditions will be imposed upon such interview, contact, testimony or production of records. For personnel in the OIG, the Counselor to the Inspector General or an attorney designated by the Counselor to the Inspector General, is the responsible VA official authorized to make the determinations provided in §14.807, and that official will keep the General Counsel informed of such determinations for purposes of litigation or claims of privilege.

(c) In appropriate cases, the responsible VA official shall promptly notify the Department of Justice of the demand or request. After consultation and coordination with the Department of Justice, as required, and after any necessary consultation with the VA component which employs or employed the VA personnel whose testimony is sought or which is responsible for the maintenance of the records sought, the VA official shall determine in writing whether the individual is required to comply with the demand or request and shall notify the requester or the court or other authority of the determination reached where the determination is that VA will not comply fully with the request or demand. The responsible VA official shall give notice of the decision to other persons as circumstances may warrant. Oral approval may be granted, and a record of such approval made and retained in accordance with the procedures in §14.807(f) concerning oral requests or demands.

(d) If, after VA personnel have received a request or demand in a legal proceeding and have notified the responsible VA official in accordance with this section, a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph (b) of this section shall furnish the requester or the court or other authority with a copy of §§14.800 through 14.810 and any other relevant documentation, inform the re-

quester or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the VA official concerned.

(e) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the demand or request in response to action taken pursuant to §14.807(d), or if such court or other authority orders that the demand or request be complied with notwithstanding the final decision of the appropriate VA official, the VA personnel upon whom the demand or request was made shall notify the responsible VA official of such ruling or order. If the responsible VA official determines that no further legal review of or challenge to the ruling or order will be sought, the affected VA personnel shall comply with the demand, order or request. If directed by the appropriate VA official after consultation with the appropriate United States Attorney's office, however, the affected VA personnel shall respectfully decline to comply with the demand, request or order. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(f) Normally, written demands or requests allowing reasonable lead time for evaluation and processing are required. However, in emergency situations where response time is limited and a written demand or request is impractical, the following procedures should be followed:

(1) The responsible VA official has the authority to waive the requirement of a written demand or request and may expedite a response in the event of an emergency under conditions which could not be anticipated in the course of proper planning or which demonstrate a good faith attempt to comply with these regulations. Determinations on oral demands or requests should be reserved for instances where insistence on compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the legal proceeding for which the testimony or records are sought. No requester has a right to make an oral demand or request and receive a determination, however. Whether to permit such an exceptional

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procedure is a decision within the sole discretion of the responsible VA official.

(2) If the responsible VA official concludes that the demand or request, or any portion of it, should be granted (after considering the factors listed in § 14.804), the responsible VA official will then orally advise the requester of the determination in accordance with the procedures provided in § 14.807(c), including any limitations on such testimony or production of records, and seek a written confirmation of the oral demand or request. The responsible VA official will make a written record of the determination made concerning the oral demand or request, including the grant or denial, the circumstances requiring the procedure, and the conditions to which the requester agreed.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.808 Expert or opinion testimony.

(a) VA personnel shall not provide, with or without compensation, opinion or expert testimony in any legal proceedings concerning official VA information, subjects or activities, except on behalf of the United States or a party represented by the United States Department of Justice. Upon a showing by the requester or court or other appropriate authority that, in light of the factors listed in § 14.804, there are exceptional circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Veterans Affairs or to the United States, the responsible VA official designated in § 14.807(b) may, in writing, grant special authorization for VA personnel to appear and testify. If, despite the final determination of the responsible VA official, a court of competent jurisdiction or other appropriate authority, orders the expert or opinion testimony of VA personnel, the personnel shall notify the responsible VA official of such order. If the responsible VA official determines that no further legal review of or challenge to the order will be sought, the affected VA personnel shall comply with the order. If directed by the appropriate VA official after consultation with the appropriate United States Attorney's office, however, the affected VA per-

sonnel shall respectfully decline to comply with the demand, request or order. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(b)(1) If, while testifying in any legal proceeding, VA personnel are asked for expert or opinion testimony concerning official VA information, subjects or activities, which testimony has not been approved in advance in accordance with these regulations, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by these regulations;

(ii) Request an opportunity to consult with the responsible VA official mentioned in § 14.807(b) before giving such testimony;

(iii) Explain that, upon such consultation, approval for such testimony may be provided; and

(iv) Explain that providing such testimony absent such approval may expose the individual to criminal liability under 18 U.S.C. 201–209 and to disciplinary or other adverse personnel action.

(2) If the witness is then ordered by the body conducting the proceeding to provide expert or opinion testimony concerning official VA information, subjects or activities without the opportunity to consult with the appropriate VA official, the witness respectfully shall refuse to do so. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) Upon notification by the witness of a request for opinion or expert testimony concerning official VA information, subjects or activities during § 14.802(d) legal proceedings, the responsible VA official shall follow the procedures contained in this section to determine whether such testimony shall be approved.

(d) If VA personnel who are unaware of these regulations provide expert or opinion testimony concerning official VA information, subjects or activities in any legal proceeding, including one mentioned in § 14.802(d) in which the United States is not already represented, without consulting with the responsible VA official, the witness, as soon after testifying as possible, shall inform the responsible VA official of

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the fact that such testimony was given and provide a summary of the expert or opinion testimony given.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.809 Demands or requests in legal proceedings for records protected by confidentiality statutes.

In addition to complying with the requirements of §§14.800 through 14.810, requests or demands in legal proceedings for the production of records, or for testimony of VA employees concerning information, protected by the Privacy Act, 5 U.S.C. 552a, or other confidentiality statutes, such as 38 U.S.C. 5701, 5705 and 7332, must satisfy the requirements for disclosure imposed by those statutes, and implementing regulations, such as 38 CFR 1.511, before the records may be provided or testimony given. Accordingly, the responsible VA official may first determine whether there is legal authority to provide the testimony or records sought under applicable confidentiality statutes before applying §§14.800 through 14.810. Where an applicable confidentiality statute mandates disclosure, §§14.800 through 14.810 will not apply.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

§ 14.810 Fees.

(a) The testimony of VA personnel as witnesses, particularly as expert witnesses, and the production of VA records in legal proceedings subject to §§14.800 through 14.810 are services which convey special benefits to the individuals or entities seeking such testimony or production of records above and beyond those accruing to the general public. These services are not regularly received by or available without charge to the public at large. Consequently, these are the sort of services for which the VA may establish a charge for providing under 31 U.S.C. 9701. The responsible VA official will determine all fees associated with §§14.800 through 14.810, and shall timely notify the requester of the fees, particularly those which are to be paid in advance.

(b)(1) When a request is granted under § 14.808 to permit VA personnel to

testify in whole or in part as to expert, opinion or policy matters, the requester shall pay to the government a fee calculated to reimburse the cost of providing the witness. The fee shall include:

(i) Costs of the time expended by VA personnel to process and respond to the demand or request;

(ii) Costs of attorney time expended in reviewing the demand or request and any information located in connection with the demand or request;

(iii) Expenses generated by materials and equipment used to search for, produce, and copy the responsive information;

(iv) The cost of the time expended by the witness to prepare to testify; and

(v) Costs of travel by the witness and attendance at trial.

(2) All costs for documents necessary for such expert testimony shall be calculated as provided in VA regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) When an individual testifies in legal proceedings covered by these regulations in any capacity other than as an expert witness, the requester shall pay to the witness the fee and expenses prescribed for attendance by the applicable rule of court. If no such fee is prescribed, the applicable Federal rule, such as a local Federal district court rule, will apply. No additional fee will be prescribed for the time spent while testifying or in attendance to do so.

(d) When a requester wishes to interview VA personnel as part of legal proceedings covered by these regulations, and such interview has been approved in accordance with these regulations, the requester shall pay a fee calculated upon the total hourly pay of the individual interviewed.

(e) When VA produces records in legal proceedings pursuant to §§14.800 through 14.810, the fees to be charged and paid prior to production of the records shall be the fees charged by VA under its regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(f) Fees shall be paid as follows:

(1) Fees for copies of documents, blueprints, electronic tapes, or other

VA records will be paid to the VA office or station providing the records, and covered to the General Fund of the Department of the Treasury.

(2) Witness fees for testimony shall be paid to the witness, who shall endorse the check "pay to the United States," and surrender it to his or her supervisor. It shall thereafter be deposited in the General Fund.

(3) The private party requesting a VA witness shall forward in advance necessary round trip tickets and all requisite travel and per diem funds.

(g) A waiver of any fees in connection with the testimony of an expert witness may be granted by the appropriate VA official at the official's discretion provided that the waiver is in the interest of the United States. Fee waivers shall not be routinely granted, nor shall they be granted under circumstances which might create the appearance that the VA or the United States favors one party or a position advocated by a party to the legal proceeding.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301)

PART 15—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF VETERANS AFFAIRS

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25885, July 8, 1988, unless otherwise noted.

§ 15.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 15.102 Application.

This regulation (§§ 15.101–15.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 15.103 Definitions.

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or